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WITH DECISIONS, FORMS,
AND
TABLE OF COSTS.

BY
ARTHUR JEPSON,
OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.



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PREFACE.

THIS work does not pretend to the character of an elaborate treatise, but to be merely a collection of the decisions upon the Lands Clauses Consolidation Acts, which the Author ventures to hope will be found useful. For most of the Forms the Author's best thanks are due to several members of the legal profession. The Author is also greatly indebted to the owners of the copyright of Mr. Scott's book on Costs, for kindly allowing him to embody, with a slight alteration in the notes, the list in that work of costs in proceedings under the Lands Clauses Consolidation Acts.

1, NEW SQUARE,

June, 1880.

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Sale on
chief rent. | 1. Part of section 10 of Act of 1845 repealed. |
| | 2. Power to sell on chief rent extended. |
| | 3. Similar proviso with regard to 8 & 9 Vict.
c. 19, s. 10 (Scotch Act). |
| | 4. Mode of settling amount of such chief rent. |
| Borrowing
powers. | 5. Borrowing powers to be reduced in proportion. |
| Public
purposes. | 6. Sections 6—15 of Act of 1845 extended to purchases of land for public purposes. |
| Secretary
for War. | 7. Secretary for War may use powers of these Acts. |
| Construc-
tion of
Acts. | 8. This Act and the Act of 1845 to be construed together. |

LANDS CLAUSES CONSOLIDATION ACT, 1869.

1. Taxation of costs of arbitrations by Master of superior Courts. Costs of arbitration.
2. Repeal of section 33 of Regulation of Railways Act, 1868. Regulation of Railways Act, 1868.
3. High Bailiff of Westminster substituted for sheriff in cases of determination of compensation by a jury. High Bailiff of Westminster.
4. Short title and construction of Act. Short title and construction.

THE
LANDS CLAUSES CONSOLIDATION ACT
1845.

APPLICATION OF ACT.

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public nature.

[8th May, 1845.]

WHEREAS it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall apply to every undertaking authorised by any Act which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by

Section 1. any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

Applies only to public Acts. Act rendering transactions under it as though under earlier Act, prior to this Act.

This section applies only to public Acts (*Wale v. Westminster Hotel Company*, 9 W. R. 14). In the case of *In re Cherry's Settled Estates* (4 D. F. & J. 322) the Act of Parliament under which the land was taken referred to an antecedent Act of 3 & 4 Vict., an Act passed before this Act. The latter Act was therefore passed over, and the rule given by an earlier statute adopted. The language of the Act of the 9 & 10 Vict. c. 34, which was in question in *In re Cherry's Settled Estates*, was such as to render transactions under it as though they had been transactions under the antecedent Act of the 3 & 4 Vict., and to pass over this Act altogether, and it followed that the provisions of this Act could not affect such transactions. (*In re The Westminster Estate of the Parish of St. Sepulchre*, 4 D. J. & S. 243.)

Complete rule in special Act.

If the particular Act itself gives a complete rule on the subject, the expression of that rule will amount to an exception of the subject-matter of the rule out of this Act. If, however, the rule given by the particular Act applies only to a portion of the subject, that does not interfere with the rule of this Act remaining incorporated as to the other and separate part of the same subject. (*In re The Westminster Estate of the Parish of St. Sepulchre*, 4 D. J. & S. 242.)

Where only the costs in the case of payment Section 1.
into Court of money in cases of the parties being Partial
under disability were provided for, sections 80 and provision
82 were held to be incorporated in the special for costs.
Acts, there being nothing in them which varied
or excepted such provisions. (*In re Westminster*
Estate of the Parish of St. Sepulchre, 4 D. J. & S.
232.)

The special Act of a Railway Company incor- Provision
porated so much of this Act as was not inconsistent for arches
with it. It also provided that such parts of the and com-
line as passed through a certain specified piece of munica-
land should be arched over, so as to afford to the tion, s. 92.
owner a communication between the severed por-
tions. This provision was held not to be incon-
sistent with, and therefore not to exclude the
operation of section 92 of this Act, which provides
that no party shall be required to sell part of a
manufactory if he shall be able and willing to sell
the whole. (*Sparrow v. The Oxford, Worcester,*
and Wolverhampton Railway Company, 2 D. M.
& G. 94.)

Whenever there has been an undertaking for First Act
which, subsequently to the passing of this Act, before
another Act passes which authorises the taking of second Act
other lands for that undertaking, then this Act subse-
applies to the whole undertaking as if it had been quent to
always applicable to it, so far as any of its provi- this Act.
sions remain applicable, or there is anything to be
done under it.

And so where a Railway Act passed in 1844, Subse-
under which certain lands were taken, after- quent Act
wards, in 1845, this Act was passed, and in 1847 incorpo-
Act, and rating this

- Section 1.** a second Railway Act was passed extending the first, it was held that this Act applied to the whole undertaking, became consolidated both with the Act of 1844 and 1847, and that the owner of lands taken under the first Act of 1844 became entitled to the benefit of its provisions. (*The Lancashire and Yorkshire Railway Company v. Evans*, 15 Beav. 322.)
- applying to whole undertaking.**
- Ss. 16, 17.** Where a special Act authorising the making of a branch line incorporated this Act, "except so far as the provisions thereof were expressly varied," and proceeded to enact that fresh capital might be raised not exceeding a certain sum, sections 16 and 17 were held to be inapplicable. (*Weld v. South Western Railway Company*, 11 W. R. 448.)
- Commissioners of Works.** Her Majesty's Commissioners of Works and Public Buildings under 9 & 10 Vict. c. 34, and 3 & 4 Vict. c. 87, are within this section. (*In re Edmeade's Estate*, 8 W. R. 327.)
- Title of petition.** Petitions where this Act is incorporated with the special Act must be entitled in the matter of both Acts. (*Re Clarke's Estates*, 10 L. T. N. S. 366.)
- Secretary for War.** The Secretary of State for War is also empowered to use the powers of this Act under 23 & 24 Vict. c. 106, s. 7 (*infra*).
- Incorporation by reference to headings.** For the incorporation of groups of sections by reference to the headings, see below, section 5.

CONSTRUCTION OF ACT AND ACTS INCORPORATED.

§ 2. Interpretations in Act.

§ 3. Interpretations in Act and Special Acts.

§ 4. Short Title of Act.

§ 5. Incorporation of Portions by Reference to Introductory Headings.

Interpretations in this Act.

II. The expression "the special Act," used in this Act, ^{Section 2.} shall be construed to mean any Act which shall be here-^{"The special Act."} after passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed" used in this Act in reference to any ^{"Pre-scribed."} matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the works" or "the undertaking" shall mean the works or ^{"The works."} undertaking, of whatever nature, which shall by the special Act be authorized to be executed; and the expression "the ^{"Pro-} promoters of the undertaking" shall mean the parties, ^{moters of the under-} whether company, undertakers, commissioners, trustees, ^{taking."} corporations, or private persons, by the special Act empowered to execute such works or undertaking.

Her Majesty's Commissioners of Public Works ^{Commis-} purchasing under the powers of 9 & 10 Vict. c. 34, ^{sioners of} are promoters within the meaning of this section. ^{Public} ^{Works.}
(*In re Edmeade's Estate*, 8 W. R. 327.)

Interpretations in this Act and the special Act.

Section 3.	III. The following words and expressions, both in this
Interpre-	and the special Act, shall have the several meanings
tations in	hereby assigned to them, unless there be something either
this and	in the subject or context repugnant to such construction ;
the special	that is to say :—
Act.	
Number.	Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number :
Gender.	Words importing the masculine gender only shall include females :
" Lands."	The word " lands " shall extend to messuages, lands, tenements, and hereditaments of any tenure :
" Lease."	The word " lease " shall include an agreement for a lease :
" Month."	The word " month " shall mean calendar month :
" Superior Courts."	The expression " Superior Courts " shall mean Her Majesty's Superior Courts of Record at <i>Westminster</i> or <i>Dublin</i> , as the case may require :
" Oath."	The word " oath " shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :
" County."	The word " county " shall include any riding or other like division of a county, and shall also include county of a city or county of a town :
" The Sheriff."	The word " sheriff " shall include under-sheriff, or other legally competent deputy ; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression " the sheriff " or the expression " the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the
" The Clerk of the Peace."	

county, city, borough, liberty, cinque port, or place Section 3.
 where such lands shall be situate; and if the lands
 in question, being the property of one and the
 same party, be situate not wholly in one county,
 city, borough, liberty, cinque port, or place, the
 same expression shall be construed to mean the
 sheriff or clerk of the peace of any county, city,
 borough, liberty, cinque port, or place where any
 part of such lands shall be situate.

The word "justices" shall mean justices of the peace "Justices."
 acting for the county, city, liberty, cinque port, or
 place where the matter requiring the cognizance of
 any such justice shall arise, and who shall not be
 interested in the matter; and where such matter
 shall arise in respect of lands being the property of
 one and the same party, situate not wholly in any
 one county, city, borough, liberty, cinque port, or
 place, the same shall mean a justice acting for the
 county, city, borough, liberty, cinque port, or place
 where any part of such lands shall be situate, and
 who shall not be interested in such matter; and
 where any matter shall be authorized or required to
 be done by two justices, the expression "two Two
 justices" shall be understood to mean two justices Justices.'
 assembled and acting together :

Where under the provisions of this or the special "Owner."
 Act, or any Act incorporated therewith, any notice
 shall be required to be given to the owner of any
 lands, or where any act shall be authorised or
 required to be done with the consent of any such
 owner, the word "owner" shall be understood to
 mean any person or corporation who, under the
 provisions of this or the special Act, would be
 enabled to sell and convey lands to the promoters
 of the undertaking :

The expression "the Bank" shall mean the Bank of "The
Bank."
England where the same shall relate to moneys to
 be paid or deposited in respect of lands situate in

Section 3. *England*, and shall mean the Bank of *Ireland* where the same shall relate to moneys to be paid or deposited in respect of lands situate in *Ireland*.

Land tax. Redemption of land tax is a reinvestment in land under section 69 (see cases under section 69).

Right of way. The word "hereditaments" here does not include a right of way. (*Pinchin v. London and Blackwall Railway Company*, 5 D. M. & G. 851.)

Justices. S. 33. This interpretation does not apply to the word "justice" in section 33. (*Davies v. South Staffordshire Railway Company*, 2 Prac. Cas. 599.)

Short Title of Act.

Section 4. IV. And be it enacted, that in citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

Incorporation of Portions of the Act by Reference to the Introductory Headings.

Section 5. V. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act: be it therefore enacted, that for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the

matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate. Section 5.

See also section 68 and notes.

By the Chelsea Improvement Act, 1845 (8 & 9 Vict. c. 143, s. 83), it was enacted that "so much of the Lands Clauses Consolidation Act as is applicable and is not modified, or is not inconsistent with the provisions hereof, shall apply to the improvements authorised by this Act to be made, and shall be read as forming part of this Act." By section 104, the commissioners under the Act might, subject to the provisions of the Act, alter the level of streets, nothing being said as to compensation. By sections 124 and 127 the commissioners were empowered to remove from houses any projections into the street which were existing at the passing of the Act, and also on the rebuilding of projecting houses to set them back to the line of the street, and it was provided that the commissioners should make compensation to the owner, &c., in either case. Construction of special Act incorporating this Act.

The commissioners, by raising the level of a street under section 104, impeded the access to a house. It was held that the lessee of the house was entitled to compensation under section 68 of this Act, and that the fact of compensation being expressly given in cases under sections 124 and 127 of the local Act, was not inconsistent with the intention that it should be given in cases within section 104, by virtue of the general enactment in section 68 of

Section 5. this Act. (*The Queen v. St. Luke's*, L. R. 7 Q. B. 148.)

Exception
in general
terms.

Where a special Act excepted "the part with respect to the purchase and taking of lands otherwise than by agreement," it was held that this Act was incorporated, excepting only the clauses (16—68) which come under the heading, "with respect to the purchase and taking of lands otherwise than by agreement," and that the other clauses which relate to the purchase of lands otherwise than by agreement, but do not come under that heading, were not excepted. (*Reg. v. Lord Mayor of London*, L. R. 2 Q. B. 292.)

Construc-
tion of
s. 121.

Section 121 of this Act, which enacts that compensation to a person having no greater interest than as tenant from year to year shall be determined by two justices, comes as a proviso upon the clauses which enact in general terms that compensation for any interest in land is to be assessed by a jury, and section 121 may, therefore, be treated as a proviso to, and not inconsistent with, the clauses in the special Acts which enact that compensation for any interest in land is to be assessed by a jury. Consequently, compensation to a person having no greater interest than as tenant from year to year in premises required under the special Act can only be determined by justices. (*The Queen v. Lord Mayor of London*, L. R. 2 Q. B. 292.)

Local
board of
health.
Provision-
al order
of Home
Secretary.

Where the Secretary of State for the Home Department has made a provisional order empowering a local board of health to apply the compulsory clauses of this Act, such order cannot be brought up by *certiorari* to be quashed, inasmuch as, until

confirmed by Act of Parliament, it is according to Section 5. the provisions of the Local Government Act, 1858, sections 75, 77, of no validity whatever. The proper course is to petition Parliament against the passing of a confirmatory statute under the provisions of the Local Government Act, 1858, section 77. (*Frewen v. Local Board of Health of Hastings*, 13 W. R. 678.)

PURCHASE OF LANDS BY AGREEMENT.

- § 6. Power to Agree for Purchase with Persons having *any* Interest.
- § 7. Persons under Disability empowered to Sell and Convey.
- § 8. And exercise other Powers.
- § 9. But Purchase Money to be ascertained by Valuation.
- § 10. Persons absolutely entitled empowered to Sell on Chief Rents.
- § 11. To be charged on Tolls, with Power of Distress.
- § 12. Persons under Disability empowered to Sell for extraordinary Purposes.
- § 13. Company empowered to Sell such Lands, the total Quantity held by them at one Time not exceeding the Quantity prescribed.
- § 14. Restrictions in Case of Purchase from Persons under Disability.
- § 15. Municipal Corporations not to Sell without Approbation of Treasury.

Power to Agree for Purchase with Persons having any Interest.

Section 6. VI. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Municipal Corporations may now avail themselves of the powers given by this and the follow-

ing sections to section 15 under 23 & 24 Vict. Section 6.
c. 106, s. 6, which is as follows :—

“The clauses contained in the Lands Clauses Consolidation Act (1845), relating to the purchase of lands by agreement, and to agreements for sale and conveyances, sales and releases of any lands or hereditaments, or any estate or interest therein by parties under disability, shall extend and be applicable to all purchases of land and hereditaments for public purposes, which shall be hereafter made by the council of any city or borough with the sanction of the Commissioners of Her Majesty’s Treasury under the powers for that purpose contained in the Municipal Corporation Mortgages, &c., Act (1860).”

After agreement, notice to treat given with a Subse-
view to ascertaining the amount by arbitration quent
under the agreement, is not a waiver of the agree- notice to
ment. (*South Devon Shipping Co. v. Metropolitan treat.*
Board of Works, W. N. 1876, 167.) Waiver.

For the purchase of lands in consideration of a Sale in
rent charge, see sections 10 and 11; and the considera-
Lands Clauses Consolidation Act, 1860, sections tion of
1, 2, 4, and 5. chief rent.

If the agreement itself is valid, it will not be Agree-
invalidated by the fact of part of it relating to ment for
compensation for injury, which cannot take place compensa-
if the land is not taken. (*Taylor v. Directors, &c., tion not*
of the Chichester and Midhurst Railway Company, invali-
L. R. 4 H. L. 628.) dated by
abandon-
ment of
purchase.

As to mode of settling price where parties are Mode of
under disability, see section 9. settling
price.

If it be stipulated that the agreement shall Agree-
come into force on the passing of the Act, it arises ment to
take effect

Section 6. and becomes operative on the passing of the Act,
after pas- and must be regarded as *de facto* made at the
sing of date of the passing of the Act. (*Taylor v. Direc-*
Act. *tors of the Chichester and Midhurst Railway Com-*
pany, L. R. 4 H. L. 628.)

Payment Payment of the purchase money into Court will
into Court. be treated as payment to the tenant for life.
(Ibid.)

Bequest Where, after entering into an agreement, the
after landowner devised all his real estate in strict settle-
agree- ment, the costs of a suit to carry out the sale were
ment. ordered to be paid out of the purchase money.
Costs. (*Eastern Counties Railway Company v. Tufnell*, 3
Rail. Cas. 133.)

Peer. A peer has a right to bargain in his individual
character for compensation, provided that the
money is not promised as a consideration for his
vote being given or withheld, or that there has
been no fraud intended or committed upon any
party. (*Simpson v. Lord Howden.*)

Purchase A railway company contracted with the owner
money to of lands to pay interest for the purchase money,
be de- and compensation to be awarded for so much of
posited in the lands as should be taken for the railway; and
Bank until it was agreed that the money should be deposited
comple- in a certain bank until the completion of the pur-
tion. chase, and that the interest should be paid to the
owner up to and inclusive of the day on which the
purchase should be completed. It was held that
the reasonable construction of this agreement was
that it referred to the completion of the purchase
by the purchaser, that on the part of the pur-
chaser the purchase was completed by the pay-

ment of the purchase money into Court, and that Section 6. it did not necessarily refer to the complete conveyance of the estate, and the final settlement of the purchase. (*Lewis v. The South Wales Railway Company*, 10 Hare 113.)

A railway company gave the usual notice to a tenant for life of settled estates that they required a portion of the estates for their line, and afterwards made an offer for the fee simple. The solicitor of the tenant for life accepted the offer, stipulating that interest at £5 per cent. should be paid from the time of the company taking possession, and proposing that as the title was well known the company should be satisfied without the production of the deeds. To this the company objected, and proposed to pay the money into a banker's in the names of the respective solicitors pending the investigation of the title. The tenant for life's solicitor thereupon suggested that as the money must be paid into Court it had better be so paid at once. The company thereupon paid the money into Court to the account of the Railway Act only, and communicated to the tenant for life's solicitor that they had paid the money into Court under the 69th section of this Act. The solicitor for the tenant for life thereupon reminded them that interest at £5 per cent. would continue to be payable till the purchase was completed. To this the company's solicitor returned no answer. And although several other communications passed between the solicitors respecting the purchase the company's solicitors did not, till a year afterwards, express any objection to the payment of interest.

Demand
for interest
under the
agree-
ment.
Acquies-
cence of
company.

Section 6. undertaking without having done anything to adopt an agreement made before incorporation, except by staking out the intended line, specific performance was refused. The agreement in this case was not under seal. (*Preston v. Liverpool, Manchester, and Newcastle-upon-Tyne Junction Railway Company*, 17 Beav. 114.)

Indefinite-
ness;
delay;
action at
law suffi-
cient;
want of
mutuality.

Heads of an agreement were signed by agents on behalf of an opposing landowner and a railway company which was soliciting a bill in Parliament for a branch line. Among other stipulations, they provided that £400 per acre was to be paid for the land required in one set of parcels, other sums "for the land required" in other sets of parcels, and £1000 for depreciation of homesteads. On these heads being signed, the landowner withdrew his opposition, and the bill passed in July, 1847. It limited the time for completing the line to five years from the passing of the Act. In September, 1847, the solicitors of the landowner sent to the company the draft of a proposed more detailed agreement, in order that such agreement might be formally executed by the company. After repeated applications to them to have the draft agreement returned, the company's solicitors, in October, 1848, stated that the matter was not pressing, as there was no present intention of making the line. In December, 1848, the company's solicitors returned the draft agreement, so settled as to make it conditional on the formation of the railway. The landowner's solicitors immediately objected to this construction of the heads of agreement, and on the 30th January, 1849, stated that, unless the company

were prepared to execute an absolute agreement, Section 6. proceedings would be taken at once to compel the formation of the line. In February, 1849, the company expressed (by their solicitors) their intention to abide by the alterations in the draft agreement, and to accept service of any process. In July, 1850, the landowner filed a claim for specific performance.

It was held that the agreement was not sufficiently definite to be enforced; that the delay was a sufficient answer to the suit; that the remedy by way of specific performance failed for want of mutuality, and by reason of an action at law affording complete justice. On the defendants undertaking to admit in an action that the heads of agreement were adopted under their corporate seal, the claim was dismissed. (*Lord James Stuart v. London and North Western Railway Company*, 1 D. M. & G. 721.)

In another case, the agreement was made between the solicitor of the company and the landowner, and was not under seal, nor was the appointment of the solicitor as agent under seal. The company after incorporation neither entered upon the land nor took any proceedings to complete the railway. Specific performance was refused. (*Gooday v. Colchester, &c., Railway Company*, 17 Beav. 132.) But in these last two cases there seem to have been some special circumstances, for, if the contract be clear and distinct, the Court will enforce specific performance.

Specific performance of a contract by a railway company to purchase an interest in land was

No adoption. Appointment of agent and agreement not under seal.
Contract construed out of documents.

Section 6. enforced at the suit of the vendor as falling within the provisions of the Statute of Frauds, in a case where the contract arose out of a notice to treat, given by the company, and where the proof of the writing was found in documents which had their origin in an intention to carry out the purchase under the provisions of the company's special Act and this Act. (*Inge v. The Birmingham, Wolverhampton, and Stour Valley Railway Company*, 3 D. M. & G. 658.)

As to compensation of tenants.

An agreement between a company and a tenant for life provided that the company should compensate the yearly tenants, and the tenant for life those of a longer term. One of the tenants from year to year claimed to have an agreement for a lease for a longer term, but allowed the company to compensate him as a yearly tenant. Subsequently he obtained a lease of land, including that taken by the company, and on proceeding to bring an action against the company was restrained, and a reference directed to ascertain the validity of his agreement for a lease. (*Norfolk Railway Company v. Bayes*, 13 Jur. 435.)

Reference as to validity of lease.

Purchase of canal shares.

Where the special Act provided that, "from and after the opening of the railway from A. to G. for public use," the company should purchase the shares in the N. and the G. Canals, and the railway was opened for public use between N. and G., but not between N. and A., the part opened competing with the G. Canal, and the part unopened being that which would, when opened, compete with the N. Canal, it was held that the railway had not been opened for public use within

the meaning of the special Act, but a *mandamus* Section 6. was issued to the company to complete the line to A. (*Grantham and Eastern Junction Railway Company*, 15 Jur. 991.)

If the agreement is to purchase land at a price Price and compensation to be settled by arbitration. for the land, and compensation to be settled by arbitration, damage unforeseen at the time of the arbitration is not included. (*Lawrence v. Great Northern Railway Company*, 16 Q. B. 643 ; *Lancashire and Yorkshire Railway Company v. Evans*, 15 Beav. 322.)

In another case it was covenanted that it should Stipulations as to execution of conveyance and payment of purchase money. be referred to W. T. to determine the price, that the purchase money should be paid within three days after making the award, and "thereupon" L. should execute a conveyance "subject" to the payment of the amount of such purchase money into the Court of Chancery as provided by this Act. The arbitrators found the value of the land at a certain sum, and directed it to be paid, &c. (following the words of the submission). It was held that though the arbitrator might have exceeded his jurisdiction in ordering payment, the rest of the award was good, and that the Court could order payment. The payment of the money and the execution of the conveyance by L. were held not to be dependent conditions, but that the payment was to precede the conveyance, and until payment the conveyance need not be tendered. (*Lindsay v. Direct London and Portsmouth Railway Company*, 1 Practice Cases, 529.)

And where by agreement the arbitrator was to Arbitrator to decide as to decide, amongst other things, what accommodation

Section 6. works should be carried out, the reference being subject to the Railways, Lands, and Companies Clauses Consolidation Acts, and the umpire omitted them altogether from his award, it was held that reference being made to the Railways Clauses Consolidation Act, the umpire was not bound to include in his award matters which are specially provided for by that Act (*Skerrat v. North Staffordshire Railway Company*, 5 Rail. Cas. 166) ; but in a later case it has been decided that where a railway company takes land by private contract, the jurisdiction of the Court of Chancery is not ousted by the provisions of the Railway Acts. (*Sanderson v. Cockermouth and Workington Railway Company*, 2 H. & T. 327.)

Specific performance against person having contract for purchase from third person.

Where a company agreed with a person who had a contract for purchase of the land, but who had not paid his purchase money, and seemed to have abandoned the contract, specific performance against that person and his vendor was refused. (*South Eastern Railway Company v. Knott*, 10 Hare, 122.)

Cheque ; presentation deferred by agreement ; failure of bank meanwhile.

A railway company had entered into an agreement with a landowner for the purchase of land A. They found that they did not at the time require this land, but required immediately land B, belonging to the same landowner. He consented to sell them B if they would at the same time pay for A. The finance committee of the company drew a cheque for the price of A, and another for the price of B, and left the chairman to make the best arrangement he could with the landowner. The agent of the landowner received both cheques upon

an agreement that the cheque for B should not be presented for a week, to give time for the completion of a more formal agreement as to the purchase of A than that which had been executed. The preparation of the agreement having been delayed beyond the week, communications took place between the chairman of the finance committee (who was one of the drawers of the cheque) and the landowner's solicitor, in which the former desired that the cheque might continue to be retained, as the agreement was not completed. Section 6.

It appeared that the fact of the cheque outstanding had been the subject of discussion in the finance committee, and had been considered by them to be unsatisfactory. Before the execution of the agreement, and before the presentation of the cheque, the bank failed on which it was drawn, and in which the chairman was a partner. It was held that, whether the chairman in desiring the presentation of the cheque to be delayed was acting *ultra vires* or not, his act was sanctioned by the committee and bound the company, and that the company and not the landowner must bear the loss; but that it was doubtful whether the chairman was acting *ultra vires*, being one of the drawers of the cheque. (*Lord Ward v. The Oxford, Worcester, and Wolverhampton Railway Company*, 2 D. M. & G. 750.)

Where no time was mentioned for payment, but interest was to be payable on the sum agreed upon as the price from the date of the commencement of the works, specific performance was refused to the vendor. (*Bodington* No time mentioned for payment.)

Section 6. v. *Great Western Railway Company*, 13 Jur. 144.)

Accommodation works. Where the agreement stipulates for certain accommodation works, but the conveyance is silent, specific performance of the agreement will be enforced. (*Foster v. Birmingham, &c., Railway Company*, 2 W. R. 378.)

Reference as to what necessary. In an action for specific performance of an agreement to make such ways, roads, and slips for cattle as may be necessary, a reference will be directed to inquire what are necessary. (*Sanderson v. Cocker-mouth and Workington Railway Company*, 2 H. & T. 327.)

Action at law maintainable. The fact of an action at law being maintainable will not prevent the Court decreeing specific performance. (*Eastern Counties Railway Company v. Hawkes*, 5 H. L. 331.)

Agreement before incorporation. An agreement to withdraw or withhold opposition to a bill in Parliament is not illegal, and a Court of Equity will enforce a contract founded on such a consideration.

Where company have derived benefit from the agreement. An incorporated company will be bound by the agreement of its individual members acting before incorporation on its behalf if the company has received the full benefit of the consideration for which the agreement stipulated on its behalf. Where a person, acting on behalf of the subscribers to a railway who were then soliciting a bill in Parliament for the purpose of forming them into an incorporated joint-stock company entered into a contract with the trustees of a road, whereby it was stipulated that, in consideration of the trustees withdrawing their opposition in Parliament,

and consenting to forego certain clauses of which Section 6.
 they had intended to press for the insertion in the Act, a formal instrument to the effect of the clauses should be executed under the seal of the company when incorporated, and the bill was accordingly allowed to pass unopposed and without the clauses, an injunction was granted at the suit of the trustees to prevent the company from violating the provisions contained in the omitted clauses. (*Edwards v. The Grand Junction Railway Company*, 1 M. & C. 650; *Harby v. East and West India Docks, &c., Railway Company*, 1 D. M. & G. 290.)

An agreement before incorporation, that the arbitrator shall decide what accommodation works shall be carried out, will be ordered to be specifically performed, and the works ordered by the arbitrator constructed. (*Wood v. North Staffordshire Railway Company*, 13 Jur. 466.)

Where, by the agreement, the company have undertaken to obtain from Parliament powers to enable the vendor to make a good title, they cannot set up his deficient title as a defence to an action for specific performance. (*Eastern Counties Railway Company v. Hawkes*, 5 H. L. 331.)

If the company subsequently proceed under their compulsory powers, they will be taken to have abandoned the agreement, and so will not be able to obtain specific performance. (*Bedford and Cambridge Railway Company v Stanley*, 2 J. & H. 746, 1 N. R. 162.)

Where the purchase of lands for extraordinary purposes is authorised, the vendor is not bound to see that it is strictly required for such purposes;

Section 6. and, in the absence of knowledge to the contrary and *mala fides*, can enforce the agreement. (*Eastern Counties Railway Company v. Hawkes*, 5 Cl. & Fin. 331.)

Tenant for life.
Refusal to appoint surveyor. A company will be compelled to complete within a reasonable time, and, on being satisfied that the price agreed upon is reasonable, the Court will order the company to appoint a valuer under section 9. (*Baker v. Metropolitan Railway Company*, 31 Beav. 504.)

Adverse claim.
Injunction refused. An application by a person, whose land the company were also taking, for an injunction to restrain the company from continuing in possession of land which they had purchased under this section from another person, but which land the applicant claimed, was refused. (*Webster v. South Eastern Railway Company*, 1 Sim. N. S. 272.)

Vendor's lien. No privileges attach to a company any more than to a private individual, and a public company stands exactly in the same position as a private person with regard to the retention of the possession of land under a contract. An unpaid vendor of land of which the company is in possession has a lien on the land for the purchase money and for compensation money for severance, which lien the Court will enforce by sale, even though the line is open for public use (*Walker v. Ware, Hadham, and Buntingford Railway Company*, L. R. 1 Eq. 195; *Wing v. Tottenham and Hampstead Junction Railway Company*, L. R. 3 Ch. 740; *Earl St. Germans v. Crystal Palace Railway Company*, L. R. 11 Eq. 568; *Viner v. Hoylake Railway Company*, 17 W. R. 92); and he is not

Lien if deposit not equal to

deprived of that lien by a deposit and bond under section 85, or by accepting a deposit in the name of trustees in lieu of the statutory deposit, if the purchase and compensation moneys exceed the deposited sum. (*Walker v. Ware, Hadham, and Buntingford Railway Company*, L. R. 1 Eq. 195.)

Section 8.
price of
lands.

Where the agreement was that the company should pay £2000 in cash, or, at the option of the company, in such securities as should be agreed upon between the parties, it was held that this was not a contract to take securities instead of cash, and that the vendor had a lien for his purchase money, and was entitled to a sale in default of payment (*Pell v. Midland and South Wales Railway Company*, 17 W. R. 506), and to a receiver, but not to an injunction restraining the company from using the land until a sale. (*Munns v. Isle of Wight Railway Company*, 18 W. R. 781; *Keane v. Athenry and Ennis Junction Railway Company*, 19 W. R. 318.)

Cash or
securities.

After obtaining a declaration in his favour for purchase money, interest, and costs, the vendor is entitled, in default of payment, to an order in the cause for sale of the land. (*Viner v. Hoylake Railway Company*, 17 W. R. 92.)

How
enforced.

A company may not, by erecting hoardings or other means, prevent adjoining owners from acquiring easements over their land by prescription. (*Norton v. London and North Western Railway Company*, L. R. 9 C. D. 623; W. N. 1879, 186.)

Preven-
tion of
acquisition
of ease-
ments by
prescrip-
tion.

An adjoining owner can acquire a title to lands of a company by possession for more than twenty years. (*Ibid.*)

Acquisi-
tion of
land by
adverse
possession.

Persons under Disability empowered to sell and convey.

Section 7. VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release—that is to say, all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life or for lives and years, or for years or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their *cestui que trusts*, whether infants

issue unborn, lunatics, femes covert, or other persons, and that to the same extent as such *cestui que trusts* respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability. Section 7.

For the application of the purchase money payable in respect of lands taken from persons under disability, see sections 69–80.

Where a gross sum had been paid into Court in respect of the entire interest of lessors and a lessee, apportionment under section 74 was refused. (*Ex parte Ward*, 5 Rail. Cas. 398.) Lessor and lessee.
Apportionment.

The purchase money for lands taken by a railway company was paid into Court. After the land had been conveyed to the company, an order was made for payment of the purchase money to the tenant in tail without his executing a disentailing deed. (*In re The South Eastern Railway Company*, 20 Beav. 21; *Notley v. Palmer*, L. R. 1 Eq. 241; *Re Watson*, 4 W. R. 528.) Tenant in tail.
Money paid out without disentailing deed.

A fund which represented the interest of a tenant in tail in remainder in land taken by a railway company was ordered to be paid out of Court to the tenant in tail in remainder, with the consent of the tenant for life, without requiring a disentailing deed. (*In re Holden*, 1 H. & M. 445.) Tenant in tail in remainder.

Inalienable estates tail are within this section, and may be conveyed by the tenant in tail in possession; but this Act does not extend to the Crown, for the King not being specially named in it, the rights of the Crown are unaffected by it. (*In re The Cuckfield Burial Board*, 19 Beav. 153.) Inalienable estates tail.

Where injury and inconvenience had been sus- Tenant for life in occupation.

Section 7. tained by a tenant for life, part of the purchase money was ordered to be paid out to him as compensation. (*Re Collis*, 14 L. T. N. S. 352.)

Equitable
tenant for
life.

Under this section an equitable tenant for life cannot convey alone, but must join the parties having the legal estate. (*Lippincott v. Smith*, 8 W. R. 336.)

Specific
perform-
ance
against
tenant for
life.

The Court will not decree specific performance of a contract entered into with a tenant for life for sale of parts of a settled estate in a suit against a tenant for life in remainder alone. Where a tenant for life contracted to sell parts of a settled estate to a company and to give immediate possession, and it appeared that the land was subject to a mining lease of which there were then thirteen years to run, and to a surface lease with four years to run, and to tenancies from year to year which had been overlooked by the vendor, and for which the company had to pay compensation, it was held that the leases having expired before the death of the first tenant for life, and the remaindermen not being bound by the tenancies from year to year, the company had no equity after the death of the first tenant for life as against the tenant for life in remainder to deduct the compensation paid by them from the purchase money of the land. (*North Staffordshire Railway Company v. Lawton*, 3 N. R. 31.)

Deduction
as against
remainder-
men in
respect of
undis-
closed
leases.

Land
limited to
married
woman
and her
husband
in fee.

Where land stands limited to a woman and her husband in fee in remainder, she may convey under this section. (*Cooper v. Gosling*, 11 W. R. 931.)

Lunatic.
Who must
join in
convey-
ance, and

Where freehold land of a lunatic had been taken by a corporation under the provisions of this Act, and the committee petitioned for leave to convey

to the corporation, and to have the purchase money Section 7. carried over to the credit of the lunacy and invested, petition for payment out. it was held that the next of kin to the lunatic were proper parties to the application, and that their costs, as well as those of the heir-at-law, must be paid by the corporation. (*Re Briscoe*, 2 D. J. & S. 249.)

The sanction of the Lord Chancellor must first be obtained to a purchase from the committee of a lunatic. (*Re Taylor*, 6 Rail. Cas. 741.) Sanction of Lord Chancellor.

Money paid into Court by a railway company for land taken under this Act from a person who was in a state of mental imbecility, and who continued in that state until his death, but was not the subject of a commission of lunacy, was ordered after his death not to be reinvested in or considered as land, but to be paid to his executors. (*In re The Lincolnshire Railway Act*, 1 Sim. N. S. 260.) Reinvestment; conversion.

"Possession" here means actual occupation. "Possession." (*North Staffordshire Railway Company v. Lawton*, 3 N. R. 31.)

Powers of Persons under Disability.

VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to relase lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking. Section 8.

*Purchase Money to be ascertained by Valuation.***Section 9.**

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or, if not, then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the Bank for the benefit of the parties interested, in manner hereinafter mentioned.

Operation
of section
extended
to sales on
chief rent
by persons
under dis-
ability.
Applica-
tion of
section to
compensa-
tion for
injury.

By section 4 of the Lands Clauses Consolidation Act, 1860, the operation of this section is extended to the case of sales on chief rent by persons under disability authorised by that Act.

This section applies also to compensation in respect of permanent damage done to lands not taken and belonging to persons under disability. (*Stone v. Corporation of Yeovil*, L. R. 2 C. P. D. 99.)

If the directions of this section are not regularly carried out, the price of the land will be regarded as not being regularly fixed, and specific performance of the agreement will not be granted. (*Wycombe Railway Company v. Donnington Hospital*, L. R. 1 Ch. 268; see *Ex parte Rector of Adderley*, 12 W. R. 243.) Section 9.
Must be
strictly
complied
with.

If the company refuse to carry out the agreement, and do not appoint a surveyor under this section, the Court will direct an inquiry as to the sufficiency of the price agreed to be paid by the agreement. (*Baker v. Metropolitan Railway Company*, 31 Beav. 504.) Refusal of
company
to appoint
surveyor.

If the parties interested in requiring this section to be complied with do not require the valuation, it may be dispensed with. (*Dean and Chapter of Ely and Peterborough, &c., Railway Company*, W. N. 1869, 201.) When dis-
pensed
with.

Power to sell on a Rent-charge.

X. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorised to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum. Section 10.

So much of this section as provides that, save in the case of lands of which any person is seised in Part re-
pealed.

Section 10. fee, or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is repealed by 23 & 24 Vict. c. 106, s. 1.

Power extended by 23 & 24 Vict. c. 106, s. 2.

The power to sell in consideration of a rent-charge has been extended by 23 & 24 Vict. c. 106, s. 2, to persons under disability.

Effect upon borrowing powers of company.

With reference to the effect upon the borrowing powers of the company of purchasing lands subject to a rent-charge, see 23 & 24 Vict. c. 106, s. 5.

No vendor's lien.

Where, by an agreement, a company contracted in consideration of the payment of a yearly rent-charge to purchase land for the construction of docks, and subsequently entered and completed the construction of the docks, but had not made any payment in respect of the rent-charge, it was held that the vendors were not entitled to a lien for the unpaid arrears of the rent-charge. (*Earl of Jersey v. Bristol Ferry Floating Dock Company*, L. R. 7 Eq. 409.)

Holders have a first charge.

The holders of rent-charges under this section have a first charge on the lands which they sold (but no charge upon other lands which they have not sold), and also on the undertaking of the company, that is to say on the net earnings, after paying in the first place what is necessary to maintain and work the line. And they rank *pari passu* as between themselves as regards the earnings and profits of the undertaking. (*Eyton v. Denbigh, Ruthin, and Corwen Railway Company*, L. R. 7 Eq. 439.)

Lands charged with an-

Certain lands were charged with the payment of an annuity of £50 for the benefit of a lunatic

during his life, if he should so long continue of ^{Section 10.} unsound mind. The lands were sold and conveyed by the owner to the Metropolitan Board of ^{nuity payable to} Works, subject to the annuity. The Board offered to purchase a government annuity of £50 for the life of the lunatic as a compensation for his interest in the property. This was agreed to by the committee, subject to the approbation of the Court. The committee then presented a petition in the Chancery Division and in Lunacy, praying that the Board might be at liberty to purchase in the name of the lunatic a government annuity of £50 for his life, and that upon such annuity being purchased, and on payment by the Board of the costs of the application, the committee might be at liberty to release the premises from the annuity. James, L.J., said: "This annuity charged on land is a hereditament, and, therefore, comes within the clause as to the purchase of 'lands,' since by the interpretation clause the word 'lands' includes hereditament. I am, therefore, of opinion that we have jurisdiction to make the order, for the committee could with our sanction sell the annuity to the Board for a sum of money under the Act, and we could in Lunacy direct that sum to be applied in the purchase of a government annuity." (*In re Brewer*, L. R. 1 C. D. 409.)

A burial board was not allowed to take land in ^{Burial board.} consideration of payment of a perpetual annual sum. (*In re Barrow*, 3 W. R. 635.)

Rent-charges to be charged on Tolls, with Power of Distress.

Section 11. XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the Superior Courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

Payment
of rents to
be charged
on tolls.

Powers
extended
by 23 & 24
Vict. c.
106, s. 2.

Vendor's
lien.

Priority of
holders.

The powers given in this section have been extended by 23 & 24 Vict. c. 106, s. 2, to the case of sales by persons under disability.

As to vendor's lien for unpaid arrears of rent, see *Earl of Jersey v. Briton Ferry Floating Dock Company*, under section 10; and as to priority of holders over debenture holders and others, see *Eyton v. Denbigh, Ruthin, and Corwen Railway Company*, also under section 10.

Persons under Disability empowered to sell for Extraordinary Purposes.

Section 12. XII. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would

Power to
purchase
lands re-
quired for

be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes. Section 12.
additional purposes.

This section and the next seem to be intended to enable the promoters to acquire land which, at the time of passing the special Act, was not supposed to be required for the undertaking. Object of section.
(*Hooper v. Bourne*, L. R. 3 Q. B. D. 272.)

Section 127 does not apply to lands taken under this section. (*City of Glasgow Union Railway Company v. Caledonian Railway Company*, L. R. 2 Sc. App. 160; *Hooper v. Bourne*, L. R. 3 Q. B. D. 281.) S. 127 does not apply to lands taken under this section.

Where a purchase for extraordinary purposes is authorised, the vendor is not bound to see that it is strictly required for such purposes, and, in the absence of knowledge to the contrary and *mala fides*, he can enforce an agreement for purchase. Vendor not bound to see that land strictly required.
(*Eastern Counties Railway Company v. Hawkes*, 5 Cl. & Fin. 133.)

Power of Sale of Lands taken for Extraordinary Purposes. Restrictions as to Quantity held at one time.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by Section 13

Section 13. the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

See notes to section 12.

Restrictions in Case of Purchase from Persons under Disability.

Section 14. XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Municipal Corporations not to sell without Sanction of the Treasury.

Section 15. XV. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

To such applications, 23 Vict. c. 16, s. 9 (The Section 15.
Municipal Corporation Mortgages, &c., Act) applies Municipal
Corpora-
tion Mort-
gages Act.
and is as follows ;—

“Where any application by the council of any borough is made for the approbation of the said commissioners to any proposed disposition, purchase, or acquisition of any property, and the said commissioners either altogether refuse the application, or grant their approbation conditionally, or otherwise qualify the same, notice of the correspondence between the said commissioners and the council, shall forthwith and for one month be fixed on the outer door of the town hall, or in some public or conspicuous place within the borough, and a copy of such correspondence shall during the same period be kept in the town clerk’s office, and be freely open to the like inspection as by law provided with respect to the copy of the memorial containing such application required to be kept in such office.”

THE COMPULSORY TAKING OF LANDS.

And with regard to the taking of lands otherwise than by agreement, be it enacted as follows :—

§ 16. Capital to be subscribed before Powers put in Force.

§ 17. What Evidence of Subscription of Capital is sufficient.

Time for
exercise of
powers.

For the time during which compulsory powers may be exercised, see section 123.

Principle
on which
questions
decided.

It is on the ground of a general public good that the Legislature grants to railway companies the compulsory powers of taking the property of individuals.

In questions between companies and individuals whose property the former seek to take under compulsory clauses in their Acts, the Court does not strain the construction of the Act in favour of the former.

Where
consent of
third per-
sons neces-
sary before
undertak-
ing can be
completed.

When the power of fully completing a railway according to the intention of the Legislature depends on the voluntary consent of individuals having property on the proposed line, such consent ought to be obtained by the company before they proceed in the undertaking.

When it is
evident
that under-
taking
cannot be
completed.

It is doubtful whether, when it is evident that the line of a railway company cannot be fully completed, the company have a right compulsorily to take any part of the property in the proposed line. (*Gray v. Liverpool and Bury Railway Company*, 9 Beav. 391.)

The ownership acquired in land by a public company under their compulsory powers for the purpose of their works is a qualified ownership to be restricted to the purposes expressed in the Act, those purposes being of the essence of the contract. Therefore, the landowner whose comfort and enjoyment of the remainder of his estate is affected by the company applying the ownership for other purposes not contemplated by the Act is entitled to an injunction to restrain the use of the land for such purposes. (*Bostock v. North Staffordshire Railway Company*, 3 S. & G. 283.)

Ownership only for purposes of Act.

The land sought to be taken must *bond fide* be required for the purposes of the Act before it is allowed to be taken. If, however, land which has been taken originally without being *bond fide* necessary, subsequently becomes so, the possession of the company will not be interfered with. (*Webb v. Manchester and Leeds Railway Company*, 4 My. & Cr. 116.)

Must be *bond fide* required.

Where a company had power to take land "as they might think necessary" for the purposes of the railway, it was held that an affidavit of the engineer that certain land was or would be wanted for the purposes of the company was not sufficient, but the purposes must be specified so that the Court may judge if the land is *bond fide* required. (*Flower v. London, Brighton, and South Coast Railway Company*, 2 Dr. & Sm. 330.)

What the company may think necessary.

Where "such of the lands mentioned in the Act as should be necessary" were authorised to be taken, the company were not allowed to take compulsorily and permanently land required only

Land required merely for excavating material.

for the purpose of excavating material, although within the limits of deviation. (*Eversfield v. Mid-Sussex Railway Company*, 3 D. & J. 286; *Bentinck v. Norfolk Estuary Company*, 8 D. M. & G. 714.)

Municipal
corpora-
tions.

But where the lands are required by a body for the improvement of a town, and no profit or compensation is to be obtained, the public bodies are not confined, like railway companies, to the narrow limits of the property actually required for the purpose specified, but may purchase all the property included in the schedule to their Act. (*Quinton v. Corporation of Bristol*, L. R. 17 Eq. 524.)

Time
expired.
*Manda-
mus.*

Where the time for the exercise of the powers has expired, a *mandamus* cannot be issued to compel the company to purchase land, although the company may have been required by the landowner to do so before the expiration of the time. It is doubtful whether want of funds would be sufficient reason for not issuing a *mandamus*. (*Reg. v. London and North Western Railway Company*, 6 Rail. Cas. 634.)

Exercise
of powers
within
three days
of expira-
tion of
time.

Where a company commenced to proceed under their compulsory powers within three days of the expiration of the time limited for their exercise, they were restrained by injunction, but a case was directed for the opinion of the Court of Exchequer.

Specific
perform-
ance.

Where land has been taken under the compulsory powers, and the price ascertained, specific performance of the transaction will be decreed as in the case of an agreement between vendor and

purchaser. (*Harding v. Metropolitan Railway Company*, 20 W. R. 321.)

Where no notice to treat is given, but the land is taken under the compulsory powers without any subsequent agreement, money being however paid into Court as security for purchase money duly ascertained, the parties are not in the position of ordinary vendor and purchaser, and the company cannot call upon the landowner to produce his title for their investigation. (*Martin v. London, Chatham, and Dover Railway Company*, 17 L. T. N. S. 487.)

Right to
abstract
or produc-
tion of
title.

Capital to be subscribed before Powers put in Force.

XVI. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

Section 16.

This section is not applicable to an extension Act, where the funds are to be furnished by the company. (*Reg. v. Great Western Railway Company*, 1 El. & Bl. 253; *Weld v. South Western Railway Company*, 32 Beav. 340.)

Extension
Act.

It is no answer to an action against a railway

Notice to
treat is not

Section 16. necessarily an exercise of the powers. company for not issuing their warrant under section 39 of this Act for the assessment of compensation for land, of their intention to purchase which they have given notice, that the undertaking was intended to be carried into effect by means of a certain capital, and that the whole amount was not subscribed as required by this section—the notice to treat not necessarily being an exercise of the powers of the Act, “in relation to the compulsory taking of land.” (*Guest v. Poole and Bournemouth Railway Company*, L. R. 5 C. P. 553.)

Land taken from third person. Estoppel. In an action for a *mandamus* against the company to complete their line, the company is not estopped from pleading that the capital has not been subscribed, by the fact, that, under their compulsory powers, they have taken other land from another person. (*Reg. v. Ambergate, &c., Railway Company*, 1 El. & Bl. 372.)

Evidence of the Subscription of the Capital.

Section 17. XVII. A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

Certificate evidence of subscription of capital. The magistrates' certificate is conclusive evidence of the subscription of the capital. (*Ystalyfera Iron Company v. Neath and Brecon Railway Company*, L. R. 17 Eq. 142.)

NOTICE TO TREAT.

§ 18. Notice to treat.

§ 19. Service on Individuals.

§ 20. Service on Corporations Aggregate.

XVIII. When the promoters of the undertaking shall ^{Section 18.} require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Before the 'company take possession, they must give notice to treat to all persons having any interest in the land. (*University Life Assurance Society v. Metropolitan Railway Company*, W. N. 1866, 167.)

Where the company purchase from a person ^{Purchase from person having contract for sale.} having a contract for sale, and the price is duly fixed, the vendors under the contract being aware

Section 18. of all the proceedings, they are liable to have the price assessed afresh on the rescission of their vendor's contract for sale. (*Lancashire and Yorkshire Railway Company v. Higgins*, W. N. 1877, 49.)

Question
of title.

Notice to treat and reference to arbitration leaves the question of title open. (*Campbell v. Mayor and Corporation of Liverpool*, L. R. 9 Eq. 579.)

Old notice
to treat.

A company in 1856 took possession of a plot of land, a large part of which belonged to one person, and a small part to another person, who knew neither the position nor the extent of his land. The company in 1859 took a conveyance of the large part, on which conveyance the extent of the small part was stated. The company did not pay for the small part, and the owner in 1868 brought an action of ejectment against the company, obtained judgment, and was put into possession. His possession was disturbed by the company, and he filed a bill to restrain them. The company offered to pay the value of the land as in 1856, and interest thereon, which the landowner refused. The company then produced a notice to treat, given in 1856, and gave notice of their intention to proceed under that notice. The landowner filed a second bill to restrain them. It was held that, under the circumstances, the company were not entitled to proceed under the notice to treat, and were ordered to pay the present value of the land. (*Stretton v. Great Western Railway Company*, L. R. 5 Ch. 751.)

Value of
land.

Notice
before
Act.

If the usual notice to treat be served upon the landowner before applying to Parliament for power

to take the land, and the Act, when obtained, gives power to take more than was comprised in the notice, the company is not restricted to the quantity comprised in the notice. (*In re Corporation of Huddersfield and Jacomb*, L. R. 10 Ch. 92.) Section 18.

Having regard to the essential nature and properties of a contract, the mere service of the notice cannot possibly be said to constitute a contract on the part of the landowner to sell, though it may be attended by the same, or some of the same consequences, which flow from a contract (*Haynes v. Haynes*, 1 D. & S. 435). The notice to treat is intended to fix the particular lands which the company require, and to bring the parties together in order that they may, if they can, come to an agreement as to terms; and if they cannot, then that the value of the lands shall be settled by arbitration, or by a jury, and until one or other of these proceedings takes place, the property in the land is not intended to pass to the company either at law or in equity. (*Adams v. London and Blackwall Railway Company*, 2 M. & G. 132; 2 H. & J. 285.) How far
is a con-
tract.

But there may follow on the service of the notice to treat such a course of conduct on the part of the company as shall amount to an agreement, such as a letter written by the solicitor of the company to the solicitor of the landowner, promising to pay the amount claimed; and such conduct will put it out of the power of the company to insist that the Court has not jurisdiction to decree specific performance, or to insist that he can only recover his money by one of the modes pointed to in this Act. Course of
conduct
after
notice to
treat.

Section 18. (*Inge v. Birmingham, Oxford, and Worcester Railway Company*, 1 S. & G. 347; 3 D. M. & G. 658.)

Price settled by jury and possession taken. Where, after notice to treat, the price was settled by a jury and possession taken, specific performance was decreed. (*Nash v. Worcester Improvement Commissioners*, 1 Jur. N. S. 973; *Regent's Canal Company v. Ware*, 23 Beav. 575.)

Property may not be put up for sale after notice. However, after notice to treat, the landowner may not put up the property for sale by auction. (*Metropolitan Railway Company v. Woodhouse*, 13 W. R. 516.)

Conversion. Consequently the service of notice to treat does not operate as a conversion of the land in the hands of the landowner. (*Haynes v. Haynes*, 1 D. & S. 426.)

Second notice to treat for different quantity. It follows, therefore, that the company having given notice to treat, describing a certain quantity of land, are not precluded from departing from it, and giving a second notice to treat for a different quantity. (*Stamps v. Birmingham, Wolverhampton, and Stour Valley Railway Company*, 7 Hare, 251; 2 Phil. 673; 6 Rail. Cases, 123.)

No further action by company. Where the company gave notice to treat, and the landowner sent in notice and particulars of claim with request for a jury, and the company did nothing, the landowner could not recover his claim under section 68. (*Burkinshaw v. Birmingham and Oxford Junction Railway Company*, 5 Exch. 475; 6 Rail. Cases, 600.)

Specific performance. *Walker v. Eastern Counties Railway Company* (6 Hare, 595) is the only case in which it has been decided that the notice to treat constitutes a con-

tract on the part of the company, for specific performance of which an action can be brought by the landowner, and that case has since been disapproved. (*Haynes v. Haynes*, 1 D. & S. 439, 443, 451.) Section 18.

Where, after notice to treat, the landowner sent in his claim and request for a jury, and nothing was done until after the lapse of three years limited by section 123, the Court of Queen's Bench granted a *mandamus* to compel the summoning of a jury to assess the price. (*Reg. v. Birmingham and Oxford Junction Railway Company*, 12 Q. B. 634.) Nothing further done by company until lapse of the three years.

And where, after notice to treat, the landowner sent in his claim demanding a certain sum, and the company, refusing to pay such sum, had the land valued, and the amount paid into the Bank under section 85, and delivered to the landowner their bond, but did not actually take possession, the Court held that, after the expiration of three years, they were entitled to take possession. (*Marquis of Salisbury v. Great Northern Railway Company*, 17 Q. B. 853.) Possession taken after the three years.

But in a later case, the owner of leaseholds, by will in 1859, bequeathed them to his sister A., and the residue of his estate to his sister E., and in 1865 was served by a company with a notice under their Acts to treat for the purchase of the leaseholds. Surveyors appointed by the owner and the company, but not in writing, settled the value of the leaseholds, and the former verbally agreed to accept the sum named. The owner died in 1869, and the matter remained in abeyance till 1870, Price ascertained and verbally accepted by landowner.

Section 18. when the sale was completed by his executor. The notice to treat, followed by the valuation of the surveyors, was, notwithstanding the Statute of Frauds, held to be a valid contract. It was also held that there had been an ademption of the bequest to A., but that A. was entitled to the rents which had accrued between the death of the testator and the completion of the purchase by the company. (*Watts v. Watts*, L. R. 17 Eq. 217.)

Ademption.

Stamp. Where a decree has been made for specific performance, founded upon the notice to treat and assessment of value by a jury, the Court will not require the notice to treat to be stamped as an agreement. (*Rawlings v. Metropolitan Railway Company*, 18 L. T. N. S. 871.)

Notice under special Act.

Where the special Act provided that the company should give six months' notice, of their intention to take lands, to the person assessed to the relief of the poor in respect of such lands, and the company gave to the persons who were rated in respect of it, notice of their intention to take at the end of six months a tenement, and in consequence the persons served with notice took other premises, their former premises remaining on their hands unoccupied, it was held that the notice bound the company to proceed with the purchase within reasonable time after the expiration of the six months, and that the owners were entitled to substantial damages and to a *mandamus* to compel the company to proceed. (*Morgan v. Metropolitan Railway Company*, L. R. 4 C. P. 97.)

Company after six months' notice bound to proceed within reasonable time.

Notice of intention to apply

Notice given by a company after service of a notice to treat of their intention to apply for ap-

pointment of a surveyor to determine the value of ^{Section 18} the property, does not constitute a binding contract by them to take the property. They are at liberty to withdraw their notice to treat, and specific performance will be refused to the landowner. (*Grierson v. Cheshire Lines Committee*, L. R. 19 Eq. 83.)

A mere notice to treat, upon which nothing has been done, does not constitute a debt, owing or accruing, which can be attached under Order XLV. Rule II. of the Judicature Act, 1875. (*Richardson v. Elmet*, L. R. 2 C. P. D. 9.)

After notice to treat for part of a manufactory, and a counter notice under section 92, it is not necessary that there should be a second formal notice by the company under this section before summoning a jury under section 23, but under section 21 the company must give a reasonable opportunity to the landowner to agree with them before causing a jury to be summoned. (*Schwinge v. London and Blackwall Railway Company*, 3 S. & G. 30; *Pinchin v. Same*, 5 D. M. & G. 851; 1 K. & J. 34.)

After notice to treat for one part of a plot of land, a second notice may be given to treat for the remainder. (*Simpson v. Lancaster and Carlisle Railway Company*, 15 Sim. 580.)

A quarterly tenant has no interest, legal or equitable, in the property under this section. (*Syers v. Metropolitan Board of Works*, 36 L. T. N. S. 277.)

If the property is subject to a mortgage, legal or equitable, the company must serve on the mort-

for sur-
veyor.

Does not
constitute
a debt.

Second
notice
under s. 92.

Second
notice.

Quarterly
tenant.

Mortga-
gees must
be served

Section 18. mortgagees notice to treat, otherwise the mortgagees will not be bound by the proceedings. (*Martin v. London, Chatham, and Dover Railway Company*, L. R. 1 Ch. 501.)

Adverse claims.

Where a company serves notice to treat upon the person in possession and by his consent enters upon the land, though he neglects to give them particulars of his title and claim, and subsequently other persons of whose rights the company have been ignorant, and who have not been served with notice to treat, move for an injunction restraining the company from remaining upon or using the land, the Court will, on the undertaking of the company to proceed under section 85, refuse to interfere with their possession, and will adjourn the motion to chambers to see if the claimants can make a title. (*Alston v. Eastern Counties Railway Company*, 3 W. R. 559.)

Interest created after notice to treat.

An interest created by an agreement, entered into by the owner after notice to treat has been served upon him, is not a subject for compensation under this Act. Where, therefore, an owner after notice to treat entered into an agreement with a person, who for several years had occupied part of the property as a weekly tenant, and to whom he had made repeated verbal promises to grant a lease, for a lease to him for a term of three years, it was held that the tenant was not entitled to compensation for the interest created by the agreement. (*Ex parte Edwards*, L. R. 5 Ch. 389.)

S. 121.

Notice to treat does not amount to "requiring to give up possession" under section 121.

Rescission.

The power to rescind a notice to treat is confined

to commissioners acting on behalf of the executive government. (*Steele v. Mayor and Corporation of Liverpool*, 14 W. R. 311.) Section 18.

Where notice is served on a lessee in whose lease is a proviso against assignment without licence, the necessity for such licence is taken away. (*Slipper v. Tottenham and Hampstead Junction Railway Company*, L. R. 4 Eq. 112.) Proviso in lease against assignment no obstacle.

Diversion of the whole of a stream is a subject of notice to treat to be given to riparian owners. (*Bush v. Trowbridge Waterworks Company*, L. R. 19 Eq. 294 ; *Ferrand v. Corporation of Bradford*, 21 Beav. 412 ; *Stone v. Corporation of Yeovil*, L. R. 2 Q. B. D. 107.) Water.

The clauses requiring notice are wholly inapplicable to a right of way. (*Edinburgh and Glasgow Railway Company v. Campbell*, 4 Macq. 590 ; *Pinchin v. London and Blackwall Railway Company*, 5 D. M. & G. 851 ; 1 K. & J. 34.) Right of way.

In using its compulsory powers, a company is restricted to the purposes of the special Act. Therefore, in a case where by one Act a company had power to take a plot of land for one purpose, but did not take it for that purpose, they were not permitted to take it for the purpose of an undertaking sanctioned by a subsequent Act, which empowered them to take land not including the plot of land authorised to be taken by the first Act. Restriction to purposes of Act.

In this case the two Acts were entirely distinct, the second neither incorporated, nor continued, nor extended the powers of the first, nor did it refer to the lands authorised to be taken by the first

Section 18. Act. (*Lamb v. North London Railway Company*,
L. R. 4 Ch. 522.)

Time for
exercise of
powers.

Where a company are acting *bonâ fide* in exercise of their powers, and give notice to treat within the time prescribed by the Act of Parliament, then, although the purchase may not be completed before the time limited by the Act, anything which remains to be done may be done subsequently (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 9 Hare, 436; *Pinchin v. London and Blackwall Railway Company*, 5 D. M. & G. 851; 1 K. & J. 34); but after long delay the notice will be considered to have been abandoned. (*Hedges v. Metropolitan Railway Company*, 20 Beav. 109.)

Where a company, with compulsory powers under this Act for the purchase of land to be exercised within a prescribed period, serve a notice to treat on a landowner, they must, in order to exercise their powers, come to an agreement or ascertain the price to be paid within reasonable time, that is, within the period fixed by the Act for the completion of the line. And when that period has expired without any step being taken beyond the service of the notice and the claim by the landowner, the powers of the company to take the land under the notice cease to be operative (*Richmond v. North London Railway Company*, L. R. 5 Eq. 353, and 3 Ch. 679), and under these circumstances, if the company have obtained a new Act, empowering them to take the land comprised in the notice, they must give a fresh notice under the new Act. (*Richmond*

v. *North London Railway Company*, L. R. 3 Ch. Section 18.
679.)

A railway company authorised to construct a line of railway under a public street is not bound to give notice to treat or pay compensation to the owner of the land adjoining the street in respect of any part of the soil of such public street.

A *cul-de-sac* dedicated to the public is for this purpose in the same position as a public street. (*Souch v. East London Railway Company*, L. R. 16 Eq. 108.)

A railway company may not take lands to enable them to carry out an agreement with a third person, and not for the purposes of their Act. (*Vane v. Cockermouth, &c., Railway Company*, 13 W. R. 1015.)

The abstraction by a waterworks company of water from a stream for the purposes of the undertaking does not under the 6th section of the Waterworks Clauses Act, 1847, entitle a riparian owner below to require the company to treat for the purchase of his portion of the stream, but only entitles such riparian owner to claim compensation under the 68th section of this Act for the stream being injuriously affected. (*Bush v. Trowbridge Waterworks Company*, L. R. 19 Eq. 291.)

Service of Notice to Treat on Individual.

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any

Section 19. such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service on Corporations Aggregate.

Section 20. XX. If any such party be a corporation aggregate, such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

PROCEEDINGS IN CASE OF FAILURE TO TREAT.

- §. 21. Questions to be settled as hereinafter mentioned.
- §. 22. Sums under £50.
- §. 23. Sums above £50 to be settled by Arbitration or a Jury.
- §. 24. Proceedings before Justices.

Proceedings in Case of Failure to Treat. Notice of Claim.

XXI. If for twenty-one days after the service of such Section 21.
notice, any such party shall fail to state the particulars of
his claim in respect of any such land, or to treat with the
promoters of the undertaking in respect thereof, or if such
party and the promoters of the undertaking shall not
agree as to the amount of the compensation to be paid by
the promoters of the undertaking for the interest in such
lands belonging to such party, or which he is by this or
the special Act enabled to sell, or for any damage that
may be sustained by him by reason of the execution of
the works, the amount of such compensation shall be settled
in the manner hereinafter provided for settling cases of
disputed compensation.

The company must give the landowner a reason- Time for
agree-
ment.
able opportunity to agree with them before causing
a jury to be summoned. A second proposal after
counter notice under section 92 to treat for the
whole property is a reasonable opportunity.
(*Schwinge v. London and Blackwall Railway
Company*, 3 S. & G. 30.)

Section 21. The notice of claim was held to be insufficient where the claimant stated that as trustees they had "an estate and interest" in the lands. (*North Staffordshire Railway Company v. Landor*, 6 Rail. Cas. 17.)

Description of interest. The notice of claim need not, after stating the claimant to be occupier of the property, go on to describe his exact legal interest. (*Cameron v. Charing Cross Railway Company*, 16 C. B. N. S. 430.)

But where the landowner described the property as "held by me on lease and used by me partly for public purposes," his interest was held to be insufficiently described. (*Healey v. Thames Valley Railway Company*, 5 M. R. 10.)

Error in title of notice of claim. A notice of claim addressed to "the Blackburn and Clitheroe Railway Company," the name of the company being "the Blackburn Railway Company," was held to be sufficient. (*Eastham v. Blackburn Railway Company*, 9 Exch. 758.)

Arbitration. For the settlement of the amount by arbitration, see sections 25—37, and notes. And for the settlement of the amount by jury, see sections 38—57.

Amount claimed under £50.

Section 22. XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if

in any such case the compensation claimed shall not exceed Section 22.
£50, the same shall be settled by two justices.

Lands not taken, but injuriously affected, are <sup>Applica-
tion of</sup> within this section. (*Reg. v. St. Luke's*, L. R. 7 ^{section.}
Q. B. 162.)

*Sums above £50 to be settled by Arbitration or a
Jury.*

XXIII. If the compensation claimed or offered in any Section 23.
such case shall exceed £50, and if the party claiming com-
pensation desire to have the same settled by arbitration,
and signify such desire by notice in writing to the pro-
moters of the undertaking, before they have issued their
warrant to the sheriff to summon a jury in respect of such
lands, under the provisions hereinafter contained, stating
in such notice the nature of the interest in respect of which
such party claims compensation, and the amount of the
compensation so claimed, the same shall be so settled
accordingly; but unless the party claiming compensation
shall, as aforesaid, signify his desire to have the question
of such compensation settled by arbitration, or if, when the
matter shall have been referred to arbitration, the arbitra-
tors or their umpire shall for three months have failed to
make their or his award, or if no final award shall be
made, the question of such compensation shall be settled
by the verdict of a jury, as hereinafter provided.

For the settlement of the amount by arbitration,
see sections 25—37.

For settlement of the amount by a jury, see
sections 38—57.

For costs under this section, see section 34. ^{Costs.}

Where an Act provided that all disputes respect- <sup>Interrup-
tion of</sup>
ing compensation, works, matter, or things done drain.

Section 2^d. or performed under the provision of the Act should be determined by arbitration under this Act, the provision was held not to apply to a claim for compensation in respect of damage sustained by the interruption of a drain by reason of the works of the company. (*Blagrove v. Bristol Waterworks Company*, 1 H. & N. Exch. 369.)

Doubtful
title.

Where there is a doubt as to the true ownership of the land, but neither claimant is absent or prevented from treating, the value of the land should not be determined by a surveyor appointed under sections 58 and 59, but should be settled under this section. And when the wrong course has been taken, the compensation money so deposited will not be paid out until the value has been ascertained in the proper manner, and paid into Court. (*Ex parte London and South Western Railway Company*, 38 L. J. Ch. 527.)

Injunction
to restrain
from pro-
ceeding
under this
section.

By an old Act of Parliament giving a company power to make a canal, it was provided that nothing therein contained should affect the right of the owners of land to the mines or minerals lying within, or under the land used for the canal; and it should be lawful for the owners to work such mines, not thereby injuring, prejudicing, or obstructing the canal. And, further, that if the owner or worker of any coal or mine should in pursuing such mine work near or under the canal, so as in the opinion of the company to endanger or damage the same, or in the opinion of the owner or worker of the mine to endanger or damage the further working thereof, then it should be lawful for the company to treat and agree with the owner; and

in case of disagreement certain commissioners were appointed to assess the amount of compensation. Section 23.
 The commissioners never having exercised their powers, it was thought expedient for more easily settling claims for compensation to incorporate this Act with the Canal Act. Certain landowners in working their mine approached so near as in their opinion to endanger the canal. After negotiations, without result, the landowners gave notice of their intention to proceed to arbitration under this Act, thereupon the company filed their bill, and applied for an injunction. It was held that the landowners were justified in their action. (*Cromford Canal Company v. Cutts*, 5 Rail. Cas. 442.)

Where the landowner and the company agreed that two persons should nominate a person to settle the amount of compensation, and the arbitrator so nominated awarded a sum as compensation, no sum having been offered by the company, and settled the amount of costs which he awarded to be paid by the company to the landowner, it was held that the arbitration was not a compulsory arbitration under this Act, but a general reference, and that the landowner was entitled to his costs. (*Martin v. Leicester Waterworks Company*, 31 L. T. 265.) What is not arbitration under this section.

A reference to arbitration leaves the question of title open. (*Campbell v. Mayor and Corporation of Liverpool*, L. R. 9 Eq. 579.) Question of title left open.

A jury or arbitrator acting under this Act simply can only assess the value of the interest claimed, and not determine the right to that Questions determined by Court when

Section 32. interest, and if the money value so assessed is paid into Court under the 76th section, the Court is bound to decide the question of right; and if it turns out that the claimant has not the interest which he claimed, but some different interest, the Court will apply its own ordinary machinery to ascertain the value of the actual interest, and after paying the amount of such value to the claimant, will return the remainder of the money to the company which has paid it into Court. (*Brandon v. Brandon*, 2 Dr. & Sm. 305.)

money
paid in.

Value of
parties'
interests
deter-
mined.

Abortive.

*Manda-
mus* to
summon
a jury.

Second
notice
under
s. 92.

Where the proceedings have become abortive in consequence of the non-appointment of an umpire within the time limited by the statute, the owner of the land is not bound to proceed anew under section 68, but, in the event of a refusal by the company, is entitled to a *mandamus* to compel them to issue their warrant to summon a jury to assess the compensation, and a neglect to issue the warrant after a demand made upon the solicitors of the company, is a sufficient refusal to entitle the claimant to the writ. (*Ex parte Senior*, 7 D. & L. 36.)

Upon the construction of this section and the 18th, 21st, and 92nd sections, after a notice under the 18th Section, to take part of a manufactory, and a counter-notice under the 92nd section, it is not necessary that there should be a second formal notice by the company under the 18th section before summoning a jury under this section, but under the 21st section the company must give a reasonable opportunity to the landowner to agree with them before causing a jury to be summoned,

and it was held that the opportunity afforded by a subsequent proposal to treat for the purchase of the whole was such a reasonable opportunity as justified the company giving a notice of summoning a jury. (*Schwinge v. The London and Blackwall Railway Company*, 3 Sm. & G. 30.) Section 23.

Trustees in their notice stated that they had "an estate and interest" in the lands, and claimed £3344 for the same, and desired to have the compensation settled by arbitration. It was held that the submission was not in compliance with the Act, the claimants not having therein stated the nature of their interest. (*In re North Staffordshire Railway Company and Landor*, 6 Rail. Cas. 17.) Nature of interest must be stated in request for arbitration.

Where it was agreed that the amount of the value of the land to be taken, and of residential and other damage, should be referred to arbitration, and all proper communications, archways, drains, &c., made in such places and in such mode as might be decided by the arbitrators, and the reference was to be subject to the powers of the Railways, Lands, and Companies Clauses Acts, and where, by agreement, the arbitration was to decide, amongst other things, what accommodation works should be carried out, the reference being subject to the Railways, Lands, and Companies Acts, and the umpire omitted them altogether from his award, it was held that, reference being made to the Railways Clauses Consolidation Act, the umpire was not bound to include in his award matters which are specially provided for by that Act (*Skerratt v. North Staffordshire Railway Company*, 5 Rail. Cas. 166); but in a later case it has Accommodation works. Railways Clauses Act.

Section 23. been decided that, where a railway company takes land by private contract, the jurisdiction of the Court of Chancery is not ousted by the provisions of the Railway Acts. (*Sanderson v. Cocker-mouth and Workington Railway Company*, 2 H. & T. 327.)

Accommodation works. Apportionment of rents. Contingent damage.

An arbitrator under this Act has no power to set out accommodation works or to apportion rents, nor to give compensation for contingent future damage, unless it appear that such damage must necessarily arise. (*In re Ware*, 9 Exch. 395.)

Execution of conveyance before action for sum awarded.

Where, after notice to treat, the price is fixed by arbitration, an action cannot be maintained for the amount until a conveyance of the land has been executed. (*East London Union v. Metropolitan Railway Company*, L. R. 4 Exch. 309.)

S. 68.

This section applies to arbitrations under section 68. (*Evans v. Lancashire and Yorkshire Railway Company*, 1 E. & B. 754.)

Consequently, the award must be made within three months. (*Evans v. Lancashire and Yorkshire Railway Company*, 1 E. & B. 754.)

Costs.

The settlement of the costs need not be within three months after the time of the reference. (*Gould v. Staffordshire Railway Company*, 6 Rail. Cas. 568.)

Value of land where use restricted.

The value of the land in cases where it is subject, as in the case of a burial ground, to restrictions as to its use, is to be determined with reference to the interest in it of the landowners, and not with reference to its value when used for the purposes of the undertaking. (*Stebbing v. Metropolitan Board of Works*, L. R. 6 Q. B. 67.)

An award by an umpire having, on the application of the landowner, been set aside by the Court, and the matter referred back to the umpire, no proceeding was taken under the reference for nearly seven months from the date of the order, and the landowner then served the company with notice of his desire to have the compensation settled by a jury. The company applied to have the time for making the award extended. It was held that the provisions of the Common Law Procedure Act, 1854, with regard to remitting matters to the consideration of the arbitrator and enlarging the time for making the award, applied to references under this Act, and that the Court had jurisdiction to extend the time, but that, after the delay which had taken place, this jurisdiction ought not to be exercised so as to deprive the landowner of a trial by jury. (*In re Dare Valley Railway Company*, L. R. 4 Ch. 554.)

Section 23.
Enlarging
time.

Common
Law Pro-
cedure
Act.

The three months allowed by this section to "the arbitrators or their umpire" for making their award is not one and the same period, but the umpire has a new period of three months for making his award from the time when the arbitration devolves upon him. (*Skerratt v. North Staffordshire Railway Company*, 2 Phil. 475.)

Time for
making
award in
case of
umpire
appointed.

An arbitrator may, by consent of the parties, make his award after the expiration of the three months. (*In re Palmer and Metropolitan Railway Company*, 10 W. R. 714.)

Award
after three
months.

If a question of disputed compensation be submitted to arbitration under this section and section 25, and an umpire be appointed under section

Jurisdic-
tion of
Court to
set aside
award.

Section 23. 28, and the submission be made a rule of Court, under section 36 the Court has jurisdiction to set aside the award of the umpire, though neither his appointment nor award has been made a rule of Court. (*Bradshaw's Arbitration*, 12 Q. B. 562.)

Jury has
no power
to settle
extent of
interest.

The amount of compensation only, and not the extent or nature of the interest of the claimant, is to be decided by the jury. (*Ex parte Cooper*, 5 N. R. 233.)

Absent
owner.

Where an absent owner on his return is dissatisfied with the valuation, and requests an arbitration, see sections 58—67, and notes.

Proceedings before Justices.

Section 24. XXIV. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Certiorari. As to *certiorari* to quash or remove the proceedings, see section 145 and notes.

ARBITRATION.

- § 25. Appointment of Arbitrators.
- § 26. Supplying Vacancies.
- § 27. Appointment of Umpire.
- § 28. Proceedings in Default of Appointment of Umpire
- § 29. Case of Death of Single Arbitrator.
- § 30. Refusal of One of the Arbitrators to act.
- § 31. Failure to make Award within Twenty-one Days.
- § 32. Power to call for Documents and examine on Oath.
- § 33. Declaration of Arbitrator or Umpire.
- § 34. Costs.
- § 35. Delivery and Custody of Award.
- § 36. Submission a Rule of Court.
- § 37. Award not to be set aside through Error in Form.

Appointment of Arbitrators.

XXV. When any question of disputed compensation by Section 25. this or the special Act, or any Act incorporated therewith, authorised or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall

Section 25. have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation ; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

"Submi-
sion by
consent."
17 & 18
Vict.
c. 105,
s. 17.

It seems that a submission to arbitration under this Act is not a "submission by consent" under the Common Law Procedure Act, 1854. (*In re Harper and Great Eastern Railway Company*, L. R. 20 Eq. 39 ; *Ex parte Harper*, L. R. 18 Eq. 539 ; *In re Newbold and Metropolitan Railway Company*, 2 N. R. 168 ; *Rhodes v. Airedale Drainage Commissioners*, L. R. 9 C. P. 508 ; 1 C. P. D. 380.)

Special
case.

An umpire appointed in an arbitration to settle the amount of compensation under this section has no power to state a special case for opinion of the Court.

Where the parties agree in the course of the arbitration to certain deviations from the procedure directed by this Act, they do not by so doing render the reference one by consent within the meaning of the Common Law Procedure Act, 1854, s. 5, so as to enable the umpire to state a special case. (*Rhodes v. Airedale Drainage Commissioners*, L. R. 9 C. P. 508.)

A return to a *mandamus* commanding the company to take up the award to the effect that there has been no "injuriously affecting" within section 68 is good. (*Reg. v. Cambrian Railway Company*, L. R. 4 Q. B. 320.)

Section 25.

Return to
manda-
mus.

The claimant should first give notice to the company of the appointment of his own arbitrator, and then request them to appoint theirs. Upon their failing to do so, he may proceed to appoint his own arbitrator to act alone. (*Bradley v. London and North Western Railway Company*, 1 Prac. Cas. 597.)

Proper
course of
proceeding
under this
section.

By appointing an arbitrator the company do not admit their liability. (See cases under section 68.)

Appoint-
ment
under
protest.

An agreement was entered into between a landowner and a railway company that the former should not oppose a projected railway, on condition that there should be a reference to arbitration, for, among other purposes, defining the line of approach to his premises from a turnpike road, which it was proposed to divert. After the award indicating such approach had been made, it became expedient for the company further to divert the turnpike road but within the limits of deviation, and consequently necessary to alter the line of the approach to the landowner's premises. It was held that the company were precluded from making such alteration. (*Wood v. The North Staffordshire Railway Company*, 1 M. & G. 278.)

Deviation
from direc-
tions of
award.

The proper steps under this section are, first, that an endeavour should be made by the parties to concur in choosing a single arbitrator. In the

Proper
steps
under this
section.

Section 25. event of this failing, a request should be made by the one upon the other that the latter should nominate an arbitrator. Then each should make appointments in writing, and deliver them to their respective arbitrators. That is to be deemed the submission, and is irrevocable. (*Yates v. Mayor, &c., of Blackburn*, 6 H. & N. 61.)

Tender of compensation. An offer of a sum for compensation under section 34 will be in time if made before the delivery by the claimant of the appointment to his arbitrator. (*Yates v. Mayor, &c., of Blackburn*, 6 H. & N. 61.)

Surveyor of company. The surveyor of a railway company had in that character treated with a landowner, and offered a price for land required by the company. He was subsequently named by the company, and acted as their arbitrator upon an arbitration under this Act. It was held that he ought not to have been selected as an arbitrator. But the landowner knowing the fact, and, though protesting against the propriety of the appointment, proceeding with the arbitration, was held to have waived the objection. (*In re Elliott*, 2 De G. & S. 17.)

Shareholder in another company interested in undertaking. A surveyor to and shareholder in a railway company, closely connected in interest with, and holding many shares in, the company, was appointed umpire by the arbitrators, and as umpire made his award. It was held that, whatever objections there might be in point of delicacy to the appointment of such an umpire, they did not constitute sufficient grounds for setting aside the award. (*In re Elliott*, 2 De G. & S. 17.)

One sum for damage and price. One sum may be awarded for damage and price (*In re Bradshaw's Arbitration*, 5 Rail. Cas. 527.)

And where a sum was awarded for a fee simple in possession, that being what the landowner's notice claimed, though there were leases, the award was held to be good, and the company was left to deal with the tenants.

Section 25.
Sum
awarded
for fee.
Leases
subse-
quently
discovered.

If the submission has been made a rule of Court, it does not seem to be necessary before moving to set aside an award that the award should be made a rule of Court.

Award a
rule of
Court.

The landowner cannot apply to the Court to enforce the award, but must bring an action for the amount awarded. (*In re Newbolt and Metropolitan Railway Company*, 2 N. R. 168 ; *Sutton Harbour Company v. Hitchens*, 16 Beav. 381.)

Action for
sum
awarded.

An arbitrator may be called as a witness in a legal proceeding to enforce the award, and he may in such proceeding be asked questions as to what passed before him, and as to what matters were presented to him for consideration, but no questions can be put to him as to what passed in his own mind when exercising his discretionary power on the matters submitted to him. (*Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418.)

Questions
which may
be put to
arbitrator.

Supplying Vacancies.

XXVI. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator

Section 26.

Section 26. may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Appointment of Umpire.

Section 27. XXVII. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Surveyor
and share-
holder in
interested
company

A person who is surveyor to and shareholder in another company which is closely connected with the company, and holds many shares in it, may be appointed umpire. (*Elliott v. South Devon Railway Company*, 2 De G. & S. 17.)

may sit
with arbi-
trators.

The umpire may by consent sit with the arbitrators.

Non-
appoint-
ment of
umpire;
proceed-
ings abor-
tive.

Where the proceedings have become abortive in consequence of the non-appointment of an umpire within the time limited by the Act, the owner of the land is not bound to proceed anew under section 68, but in the event of a refusal by the company is entitled to a *mandamus* to compel them to issue their warrant to summon a jury to assess the compensation; and neglect to issue the warrant after a demand made upon the solicitors of the company,

is a sufficient refusal to entitle the claimant to the writ. (Ex parte Senior, 7 D. & L. 36.) Section 27.

*Proceedings in Default of Appointment of
Umpire.*

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final. Section 28.

The time for making the award runs from the date of the umpire's appointment, not from the date of the appointment of the arbitrators. (*In re Bradshaw's Arbitration*, 12 Q. B. 562; 5 Rail. Cas. 527.) Time within which umpire's award may be made.

Where the umpire was appointed by a document not under seal, and signed by a person not describing himself as Secretary of the Board of Trade, the Court considered the objection too doubtful, and refused to set aside the award. (*Wilts, Somerset, and Weymouth Railway Company v. Fooks*, 3 Exch. 728.) Irregular appointment.

Where the umpire has not been appointed, and the time limited by the Act (three months from the appointment of the arbitrators) has elapsed, the landowner is not obliged to proceed anew under Umpire not appointed within time limited by statute.

Section 28. section 68, but is entitled to a *mandamus* to compel the company to issue their warrant to summon a jury. (*Ex parte Senior*, 7 D. & L. 36.)

Case of Death of Single Arbitrator.

Section 29. XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special Act in the same manner as if such arbitrator had not been appointed.

Refusal of One of the Arbitrators to act.

Section 30. XXX. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

Party
unable to
attend
should
appear and
state rea-
son.

A party unable to attend should appear and state his reasons for desiring delay. (*In re Hewitt and Portsmouth Waterworks Company*, 10 W. R. 780.)

After-
wards
heard on
certain
conditions.

In the preceding case the party was let in afterwards to be heard as a matter of indulgence, and on condition of paying the costs incurred through the default.

Failure to make Award within Twenty-one Days.

Section 31. XXXI. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or

neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid. Section 31.

Power to call for Documents and examine on Oath.

XXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose. Section 32.

Declaration of Arbitrator or Umpire.

XXXIII. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall, in the presence of a justice, make and subscribe the following declaration; that is to say,— Section 33.

“I, A. B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming the special Act*].

“A. B.

“Made and subscribed in the presence of .”
And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

The declaration may be made before any justice Made before any

Section 33. of the peace, and not only before a justice for the county in which the lands are situated. (*Jonah Davies v. South Staffordshire Railway Company*, 2 Prac. Cas. 599.)

justice of
peace.

Interpre-
tation.

The interpretation given by section 3 to the word "justices" does not apply to the word in this section. (*Jonah Davies v. South Staffordshire Railway Company*, 2 Prac. Cas. 599.)

Costs of the Arbitration.

Section 34. XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

Public
Health
Acts.

When land has been taken compulsorily by a local board under the powers of this Act incorporated in the Public Health Act, 1875, and an arbitration takes place to determine the amount of compensation to be paid to the owner of the land so taken, the procedure with regard to such arbitration, and the right to costs, are wholly governed by the provisions of this Act, and not by those of the Public Health Act with regard to arbitrations under that Act. (*Ex parte Rayner*, L. R. 3 Q. B. D. 446.)

Lien.

There is no lien on the land sold for the costs payable under this section. (*Earl Ferrers v.*

Stafford and Uttoxeter Railway Company, L. R. Section 34, 13 Eq. 524.)

For taxation of costs, see Act of 1869, s. 1. Taxation.

Where the umpire awarded a sum as compensation, but did not find whether it was greater or less than the sum offered by the company, and awarded that the costs of the claimant should be paid according to this Act, the Court refused on motion to set aside the award, considering the objections too doubtful to be determined on motion. Award as to costs deficient.
(Wilts, Somerset, and Weymouth Railway Company v. Fooks, 3 Exch. 728.)

The only time for an offer mentioned in this Act is that the promoters are to state what sum they Time for offer. are willing to give in their notice of intention to summon a jury (section 38). But it was decided in *Fitzhardinge v. Gloucester Canal Company* (L. R. 7 Q. B. 776) that, though the company have made such an offer, yet, when the claimant gives notice of his election, the company may make a further offer at any time before the arbitrators are actually appointed. In that case the claimant gave notice of his wish to proceed by arbitration, and the company were the first to appoint an arbitrator, and they gave notice to the claimant of the appointment, and at the same time made an enlarged offer. The Court decided that the offer having been made before the arbitrators were appointed, and therefore before any costs could have been incurred in the arbitration, was in time. It was unnecessary in that case to decide that a subsequent offer would not be in time, but the whole reasoning of the case points to that conclusion.

Section 34. In a later case (*Gray v. North Eastern Railway Company*, L. R. 1 Q. B. D. 696) it was decided that the final offer which is to bind the company and the claimant's right to costs must be made before the arbitration commences; that is, when the arbitrators are appointed, and when costs may be incurred. Whether or to what extent costs have been incurred is not material; the rule is the same in all cases (and see also *Yates v. Mayor, &c., of Blackburn*, 29 L. J. Ex. 447).

As to one distinct portion a larger, as to other a similar sum awarded.

If the umpire awards as to one part of a claim more than the company have offered, and as to the other part nothing, the company having offered nothing, the landowner is entitled only to the costs incident to the part of his claim in respect of which compensation was awarded. (*Reg. v. Biram*, 17 Q. B. 969.)

Payment out of purchase money. Glebe. Perpetual curate.

In the case of glebe lands, where costs were payable by a perpetual curate, they were directed to be paid out of the purchase money. (*Ex parte Perpetual Curate of Whitworth*, 24 L. T. N. S. 126.)

Tenant for life.

And in a case of a tenant for life having refused the offer of the company, the Court has a discretion to order the payment of his costs out of the purchase money. (*Re Aubrey's Settlement*, 1 W. R. 464.)

Owner absent.

The costs of an arbitration where an absent owner on his return is dissatisfied with the valuation are regulated by section 67.

Delivery and Custody of Award.

XXXV. The arbitrators shall deliver their award in Section 35. writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

To a *mandamus* commanding the company to furnish a copy of the award to the landowner it ^{*Mandamus.*} is a good return to say that the landowner is not ^{*Return.*} entitled under this Act to compensation. (*Reg. v. Cambrian Railway Company*, L. R. 4 Q. B. 320.)

And a return that the company have already paid compensation is good. (*Reg. v. West Midland Railway Company*, 11 W. R. 857.)

The Court will, at the landowner's instance, ^{*Mandamus.*} compel the company to take up the award, and the promoters must for that purpose pay the fees due on the award, the arbitrators or umpire having a lien on the award for them. (*Reg. v. South Devon Railway Company*, 15 Q. B. 1043.)

Submission a Rule of Court.

XXXVI. The submission to any such arbitration may Section 36. be made a rule of any of the Superior Courts, on the application of either of the parties.

Where a submission to arbitration has been

Section 36. made a rule of the Court of Chancery, service of a notice of motion and filing the affidavit to set aside the award is a complaint within the meaning of 9 & 10 Will. III. c. 15, s. 2, and is in time, although the motion will not be heard until after the time limited by the Act. (*In re Corporation of Huddersfield and Jacomb*, L. R. 10 Ch. 92.)

Jurisdiction of Court.

Where a submission is made a rule of Court under this section, the Court has the same jurisdiction in dealing with it as in the case of submission under 9 & 10 Will. III. c. 15, and any application to set it aside must be made within the time thereby limited. (*In re Harper*, L. R. 20 Eq. 39.)

Where the landowner had made an appointment of an arbitrator under this Act, but refused to produce it for the purpose of enabling the registrar to draw up an order which had been obtained by the company making the submission a rule of Court, the Court refused a motion on behalf of the company that the order might be drawn up, or that the landowner might produce the appointment.

But there being in the landowner's affidavits in opposition to the motion a statement that his arbitrator had been duly appointed, and there being a recital to that effect in an appointment of an umpire, the Court on a subsequent motion ordered the submission to be made a rule of Court on that evidence of the appointment of the landowner's arbitrator. (*In re Hawley and North Staffordshire Railway Company*, 2 De G. & S. 33.)

Award need not

Where the submission to arbitration has been

made a rule of Court, it is not necessary before ^{Section 36.} moving to set aside the award to make it a rule of ^{be made a} Court. (*In re Bradshaw's Arbitration*, 5 Rail. ^{rule of} Court. ^{Cas. 527.)}

Award not to be set aside through Error in Form.

XXXVII. No award made with respect to any question ^{Section 37.} referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

The silence of an arbitrator on the subject of com- ^{Silence of} pensation for damage done by severance where it ^{arbitrator} has been claimed has been held to negative the ^{on subject} claims, and not to invalidate the award. (*In re* ^{of damage} *Duke of Beaufort and Swansea Harbour Trustees*, ^{by sever-} 8 C. B. N. S. 146.) ^{ance.}

Where a submission is made a rule of Court ^{Time.} under section 36, the Court has the same jurisdiction in dealing with it as in the case of submission under 9 & 10 Will. III. c. 15, and any ^{9 & 10} application to set aside the award must be made ^{Will. III.} within the time thereby limited. ^{c. 15.}

On the second day of an arbitration the com- ^{Absence} pany's arbitrator failed to attend, and their solicitor ^{of com-} protested in writing against proceeding in his ^{pany's} absence. The arbitrator then present and the ^{arbitrator.} umpire, who was also present, but whose time for acting had not arrived, sent a notice to the other arbitrator of their intention to proceed, and a witness was examined on behalf of the landowner, but no evidence was adduced by the company.

Section 37. The company gave notice to the arbitrator and umpire not to make an award. The time within which the arbitrators were to make their award having expired, the landowner called on the umpire to make his award, which he did, without hearing any evidence, except that given by the witness before mentioned. The award was held to be invalid as having been made in the absence of one of the parties without notice to him. And it was considered doubtful whether, if the umpire had given notice to the company of his intention to make his award, it would have been valid when made. (*In re Hanley and North Staffordshire Railway Company*, 5 Rail. Cas. 383.)

Award made without notice to absent party.

Defects in notice. Defects in the claimant's notice under sections 23 and 68 do not constitute a valid objection to the award. (*Reg. v. Sutton Harbour Commissioners*, 2 W. R. 10.)

Severance under s. 93.

One sum awarded.

One sum for interests of lessor and lessee.

Nature of interest

Where nothing is submitted but the value of the land, and a claim has been made in respect of land taken, and also under section 93 for portions severed of less than half an acre in extent, the award is not bad because one entire sum is awarded. (*In re North Staffordshire Railway Company and Wood*, 6 Rail. Cas. 25.)

Where a claim is made by a person in respect of an agreement for a renewal of his lease of the lands, and the umpire awards to the owners of the freehold one sum for the purchase "of the fee simple in possession free from all incumbrances," the award is not good. (*North Staffordshire Railway Company and Landor*, 6 Rail. Cas. 17.)

Trustees in their notice stated that they had

“an estate and interest” in the lands, and claimed Section 37. must be stated. £3344 for the same, and desired to have the compensation settled by arbitration. It was held that the submission was not in compliance with the statute, the claimants not having therein stated the nature of the interest. (*In re North Staffordshire Railway Company and Landor*, 6 Rail. Cas. 17.)

It is no objection under section 63 to the award that one sum is assessed for value of the land and compensation for severance (*Bradshaw's Arbitration*, 12 Q. B. 562), nor that the compensation is assessed on the assumption that a tenant in fee is in possession, whereas the land is occupied by a lessee (*Bradshaw's Arbitration*, 12 Q. B. 562), nor Gross sum for value of land and severance. that the award is contrary to evidence (*ibid.*). Award contrary to evidence.

The three months allowed by this section to In case of umpire appointe “the arbitrators or their umpire” for making their award is not one and the same period, but the umpire has a new period of three months for making his award, from the time when the arbitration devolves upon him. (*Skerratt v. North Staffordshire Railway Company*, 2 Phil. 475.)

A question of disputed compensation was referred to an umpire to ascertain the amount of Subject compensation not specified. compensation to be paid for the interest in the lands, and for any damage that might be sustained by reason of the execution of the works. By their private Act the company were empowered at their option to abandon certain tramways leading to the claimant's ironworks, and the latter claimed compensation for the damage which he declared would result to him if the company should ever exercise

Section 37. their option and stop up the tramways, and the umpire awarded to him compensation "for damage sustained, and which might be sustained by him by reason of the execution of the works of the railway company, or by the exercise by the company of the powers of this Act;" and this award, assuming the umpire to have given compensation for damage contingent on the tramways being stopped up, was held to be good. (*In re Brogden and Llynvi Valley Railway Company*, 30 L. J. C. P. 61.)

Award indefinite.

A company having given notice to take a leasehold hotel, it was referred to arbitration to ascertain the value of the hotel and premises, and the damages sustained, or to be sustained, by the owner and occupier by reason of the company's works, and the amount of compensation to be paid by the company to the owner in respect thereof. The arbitrator awarded a sum to the owner, "as the compensation to be paid by the company to him for all his interests of whatever nature in the above leasehold." It was held that it was impossible to say with certainty whether the arbitrator intended or not to include the damages in his award, and that the award was too uncertain for the Court to act upon, and that the owner's bill for specific performance of it had rightly been dismissed, though the owner offered to waive all claims for damages beyond the award. (*Wakefield v. Llanelly Railway and Dock Company*, 3 D. J. & S. 11.)

Approaches.

The arbitrator under this Act has no power to set out approaches to lands not taken in lieu of

communications formerly existing over lands taken, Section 37.
 both portions of lands belonging to the same party, but can only award compensation in respect of the injuriously affecting the lands not taken, by reason of the loss of the approaches; and if powers to set out such approaches be given by an additional submission, not containing a consent that this additional submission shall be made a rule of Court, the Court cannot set aside the award on the ground that no approaches are set out, inasmuch as section 36 of this Act authorises the making such submission only a rule of Court, as is in pursuance of the Act, and 9 & 10 Will. III. 9 & 10 Will. III. c. 15.
 c. 15 gives such authority only where the submission contains such consent. (*Re Ware*, 9 Exch. 403.)

Though in form the umpire has no power to Order to pay.
 order the company to pay, such informality will not vitiate the award so far as it determines the amount of compensation, assuming, of course, the company to be liable. (*Harper v. Great Eastern Railway Company*, L. R. 20 Eq. 39; *Lindsay v. Direct London and Portsmouth Railway Company*, 1 Prac. Cas. 529.)

For matter in respect of which the landowner is not entitled to compensation, it will be set aside. Matter included for which plaintiff not entitled to compensation.
 (*Beckett v. Midland Railway Company*, L. R. 1 C. P. 241.)

An award is not bad for not expressly awarding compensation in respect of damage done to land before the making of the award, by reason of the land having remained untenanted in consequence of the notice. Compensation for damage not expressly included.
 (*Re Ware*, 9 Exch. 403.)

PROCEEDINGS BEFORE A JURY.

- § 38. Notice to be given by the Promoters.
- § 39. Warrant addressed to Sheriff. If Sheriff interested, then to Coroner, &c.
- § 40. Coroner to have same Powers as Sheriff.
- § 41. Summoning of Jury.
- § 42. Impanelling of Jury.
- § 43. Sheriffs to Preside. Witnesses.
- § 44. Penalty on Sheriff and Jury for Default.
- § 45. Penalty on Witness for Default.
- § 46. Notice of Inquiry.
- § 47. If Party claiming fail to appear, Inquiry not to proceed.
- § 48. Jury to be sworn.
- § 49. Separate Assessment of Amount of Purchase Money and Compensation for Damage.
- § 50. Verdict and Judgment to be recorded.
- § 51. Costs.
- § 52. What such Costs shall include.
- § 53. Payment and Recovery of Costs.
- § 54. Special Jury.
- § 55. Deficiency of Special Jurymen.
- § 56. Other Inquiries before same Special Jury by Consent.
- § 57. Attendance of Jurymen.

Notice to be given by the Promoters.

Section 38. XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation, they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such

lands sought to be purchased by them from such party, Section 38.
 and for the damage to be sustained by him by the
 execution of the works.

Where parties appeared, and took the verdict of a jury, and at the time took no objection to a supposed defect in the constitution of the tribunal, though they had full knowledge of it, the Court of Queen's Bench would not grant a *certiorari* to bring up the inquisition to be quashed on the ground of such defect, but left the parties to their other remedies. (*Trustees of Emmanuel Hospital, Westminster, v. Metropolitan District Railway Company*, 19 L. T. N. S. 692.)

Want of jurisdiction. Acquiescence in defect in constitution of jury.

This section applies to proceedings under section 68.

As to whether the jury have power to inquire into the right of the claimant to compensation, see section 68.

Power to inquire into right to compensation.

On an application for an injunction to restrain a railway company from taking proceedings to summon a jury under the compulsory clauses of this Act, the Court thought that the plaintiff would have been entitled to an injunction but for the circumstance that the time limited for the exercise of the compulsory powers was on the point of expiring, but that the doubt as to the validity of such proceedings after that period, although the usual notice had been given of the intention of the company to take the land, was sufficient ground for declining to grant the injunction, on the company undertaking not to act on the result of the jury process without the leave of the Court, and bringing into Court a sum to answer the land-

Injunction; time on point of expiration.

Section 38. owner's costs and charges by reason of the process, without prejudice to any question. (*Wood v. North Staffordshire Railway Company*, 3 De G. & S. 368.)

Notice in
proceed-
ings under
s. 92.

Upon the construction of the 18th, 21st, 23rd, and 92nd sections of this Act, after a notice under the 18th section to take part of a manufactory, and a counter-notice under the 92nd section, it is not necessary that there should be a second formal notice by the company, under the 18th section, before summoning a jury under the 23rd section; but, under the 21st section, the company must give a reasonable opportunity to the landowner to agree with them before causing a jury to be summoned. And it was held that the opportunity offered by a subsequent proposal to treat for the purchase of the whole was such a reasonable notice as justified the company giving a notice of summoning a jury. (*Schwinge v. The London and Blackwall Railway Company*, 3 S. & G. 30.)

May pro-
ceed at the
same time
under s. 85.

Notice given to a landowner by a railway company of their intention to summon a jury does not render it inequitable for them to proceed in the meantime, under section 85, to obtain possession.

May alter
property.

Nor is it a sufficient ground to restrain the company from changing the aspect of the property, that the jury may be thereby prevented from accurately awarding compensation with reference to its original state. (*Langham v. Great Northern Railway*, 1 De G. & S. 486.)

Second
offer of
larger
amount.

The company may make a second and amended offer of larger amount. (*In re Hayward and Metropolitan Railway Company*, 4 B. & S. 787.)

The company may offer sums in respect of land ^{Section 38.} injuriously affected, and for damage to business; and if the jury give a less amount than the one ^{Distinct offers.} offer, and a greater amount than the other, the ^{Costs.} incidence of costs, under section 51, is determined by the question whether the aggregate sum awarded is greater or less than the aggregate sum offered. (*Hayward v. Metropolitan Railway Company*, 10 Jur. N. S. 418.)

It appears to be doubtful whether the words "Willing to give." "the sum previously offered" in section 51 refer ^{to give."} to the sum which the company are "willing to give" under this section. (*Ross v. York, &c., Railway Company*, 5 D. & L. 695.)

Warrant addressed to Sheriff or Coroner.

XXXIX. In every case in which any such question of ^{Section 39.} disputed compensation shall be required to be determined by the verdict of a jury, the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or, if they be not a corporation, under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute, such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned, preference shall be given to one who shall have most recently served either of

Section 39. the said offices ; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor.

Interest must be direct.

The interest must be direct and certain, and not remote and contingent (*Queen v. Manchester, Sheffield, and Lincolnshire Railway Company*, L. R. 2 Q. B. 336), such as being a shareholder in the company. (*Reg. v. London and North Western Railway Company*, 12 W. R. 208.)

Shareholder in company contemplating amalgamation.

A sheriff who was a shareholder in a company which contemplated an amalgamation with the company issuing the warrant, was held not to be interested within the meaning of this section. (*Queen v. Manchester, Sheffield, and Lincolnshire Railway Company*, L. R. 2 Q. B. 336.)

Warrant bad though landowner not aware of interest.

The warrant will be bad though the landowner did not know the sheriff to be interested. (*Reg. v. Sheriff of Warwickshire*, 3 W. R. 164.)

By consent.

The landowner may consent to the issue of the warrant by an interested sheriff. (*Reg. v. Sheriff of Warwickshire*, 3 W. R. 164; *Ex parte Baddeley*, 5 Rail. Cas. 542.)

Answer to mandamus. S. 16.

The notice to treat being not necessarily an exercise of the compulsory powers of this Act in an action for not proceeding under this section, the company cannot plead that the capital has not all been subscribed. (*Guest v. Poole and Bournemouth Railway Company*, L. R. 5 C. P. 553.)

Under-sheriff interested. Sheriff not interested.

Where the sheriff was not interested, but the under-sheriff, who was interested, presided at the inquiry, and the warrant was directed to the sheriff, it was held to be good, and the improper conduct of the inquiry was held not to be the act of the

company. (*Worsley v. South Devon Railway Company*, 16 Q. B. 539.) Section 39.

The proceedings under a warrant being quashed, the sheriff may summon a fresh jury, under the authority of the warrant already issued. (*Horrocks v. Metropolitan Railway Company*, 19 C. B. N. S. 139.) No second warrant necessary where inquisition quashed.

A *mandamus* will lie to compel a company to comply with this section. (*Fetherby v. Metropolitan Railway Company*, W. N. 1866, 354.) Mandamus.

Coroner to have the same Powers as Sheriff.

XL. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place, and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors' book and special jurors' list belonging to the county where the lands in question shall be situate. Section 40.

Summoning of Jury.

XLI. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the Superior Courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen Section 41.

Section 41. nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

No second
warrant
necessary
where in-
quisition
quashed.

This section is obligatory. If the sheriff's attempts to do his duty are frustrated by the order of a Superior Court, as by quashing the inquisition and verdict, he must proceed again under the warrant as if no such difficulty had arisen in spite of the lapse of twenty-one days, and there is nothing in this section pointing to the issuing by the land-owner of a fresh notice. (*Horrocks v. Metropolitan Railway Company*, 19 C. B. N. S. 139.)

Impanelling of Jury.

Section 42. XLII. Out of the jurors appearing upon such summons, a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the Superior Courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons, the sheriff shall return other indifferent men duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

Sheriff to Preside. Witnesses.

Section 43. XLIII. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as

the plaintiff is entitled to in the trial of actions at law; Section 43.
 and if either party so request in writing, the sheriff shall
 summon before him any person considered necessary to be
 examined as a witness touching the matters in question,
 and on the like request the sheriff shall order the jury, or any
 six or more of them, to view the place or matter in contro-
 versy, in like manner as views may be had in the trial of
 actions in the Superior Courts.

Where the under-sheriff is interested, and the Under-
sheriff
interested.
 inquiry is quashed, the company having properly Sheriff not
interested.
 directed the warrant to the sheriff are not liable Under-
sheriff
presiding.
 for the improper conducting of the inquiry.
 (*Worsley v. South Devon Railway Company*, 16
 Q. B. 539.)

Penalty on Sheriff and Jury for Default.

XLIV. If the sheriff make default in any of the matters Section 44.
 hereinbefore required to be done by him in relation to any such
 trial or inquiry, he shall forfeit £50 for every such offence,
 and such penalty shall be recoverable by the promoters of
 the undertaking by action in any of the Superior Courts;
 and if any person summoned and returned upon any jury
 under this or the special Act, whether common or special,
 do not appear, or, if appearing, he refuse to make oath, or
 in any other manner unlawfully neglect his duty, he shall,
 unless he show reasonable excuse to the satisfaction of the
 sheriff, forfeit a sum not exceeding £10, and every such
 penalty payable by a sheriff or juryman shall be applied in
 satisfaction of the costs of the inquiry, so far as the same
 will extend; and, in addition to the penalty hereby im-
 posed, every such juryman shall be subject to the same
 regulations, pains, and penalties as if such jury had been
 returned for the trial of an issue joined in any of the
 Superior Courts.

Section 44. The neglect of the sheriff does not interfere with the rights of the parties. (*Horrocks v. Metropolitan Railway Company*, 19 C. B. N. S. 147.)

Right of parties unaffected.

Penalty on Witness for Default.

Section 45. XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding £10.

Notice of Inquiry.

Section 46. XLVI. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

Offer. In proceeding before a jury under section 68, the company may make their offer at the time of giving notice under this section. (*Hayward v. Metropolitan Railway Company*, 4 B. & S. 787; *Turnham v. Metropolitan Railway Company*, 2 N. R. 77.)

If Party claiming fail to appear, Inquiry not to proceed.

Section 47. XLVII. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry

shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided. Section 47.

Jury to be sworn.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given, they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence. Section 48.

*Separate Assessment of Amount of Purchase Money
and Compensation.*

XLIX. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith. Section 49.

The jury cannot award compensation for communications made by the landowner between severed portions where the company would be 8 & 9 Vict.
c. 20, s. 69.
Severed
portions.

Section 49. obliged under section 69 of the Railway Clauses Act to make them. (*South Wales Railway Company v. Richards*, 6 Rail. Cas. 197.)

S. 63. As to what entitles the landowner to claim under the head of severance, see section 63.

Directory. The requirements of this section are directory and not conditional. (*In re Bradshaw's Arbitration*, 5 Rail. Cas. 527, 4 Q. B. 562.)

Where counsel before the jury agree that a verdict shall be taken for a lump sum, severance will be held to be included, but not interest. (*Re Charles Hayne*, 13 W. R. 492.)

Verdict and Judgment to be recorded.

Section 50. L. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Interest in case of yearly tenancies. After a verdict assessing compensation payable to landowners, entitled in fee subject to yearly

tenancies, interest was held to be payable upon the amount from the date of the verdict, although possession was not actually taken until after the expiration of the yearly tenancies. (*In re Ecclehill Local Board*, L. R. 13 C. D. 365.) Section 50.

Costs.

LI. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impanelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry. Section 51.

Where the company have offered nothing, and the jury award damages for injury, in respect of which the claimant has no right to compensation, the claimant, notwithstanding this section, is not entitled to his costs of the inquisition. (*Todd v. Metropolitan District Railway Company*, 19 W. R. 720.) No offer
and no
right in
claimant.

This and the earlier sections have been held to be incorporated with the 68th section. (*Re Hayward and Metropolitan Railway Company*, 4 B. & Inquiry
under s. 68.

Section 51. S. 795; *Railstone v. York, Newcastle, and Berwick Railway Company*, 12 Q. B. 404; *South Eastern Railway Company v. Richardson*, 15 C. B. 810.)

Time for
making
offer.

The offer of the company may be made when notice is given under section 46 of the place of inquiry. (*Hayward v. Metropolitan Railway Company*, 4 B. & S. 787; *Metropolitan Railway Company v. Turnham*, 2 N. R. 77; 11 W. R. 695.)

"Sums
previously
offered."

It is doubtful whether a sum offered under section 68, after the costs of nominating a special jury have been incurred, and before notice of an inquiry under section 46, is "a sum previously offered." (*Balls v. Metropolitan Board of Works*, L. R. 1 Q. B. 337.)

And it is doubtful whether those words refer to the sum which the company "are willing to give," and which by section 38 they are bound to state in the notice of their intention to cause a jury to be summoned. (*Ross v. York, &c., Railway Company*, 5 D. & L. 695; but see *Pearson v. Great Northern Railway Company*, 18 W. R. 529.)

Costs un-
der s. 94.

A piece of land being severed by a railway from other land of the same owner, he required the company to make him a communication between the two, on which the company required him under section 94 of this Act to sell them the severed land, as being of less value than the expense of making the communication. An inquiry then took place before a jury pursuant to that section. The jury found the land of less value than the cost of the communication. The company had made no offer for the land previous to the inquiry. It was held that this section was not incorporated

with section 94, and that the landowner was Section 51.
not entitled to his costs of the inquiry. (*Cobb v. Mid-Wales Railway Company*, L. R. 1 Q. B. 342.)

The offer must be unconditional of compensation ^{Uncon-}
for injury done, and not for compensation and costs ^{ditional}
in one sum. (*Balls v. Metropolitan Board of*
Works, L. R. 1 Q. B. 337.)

What is included in such Costs.

LII. The costs of any such inquiry shall, in case of Section 52.
difference, be settled by one of the masters of the Court of
Queen's Bench of England or Ireland, according as the
lands are situate, on the application of either party, and
such costs shall include all reasonable costs, charges, and
expenses incurred in summoning, impanelling, and re-
turning the jury, taking the inquiry, the attendance of
witnesses, the employment of counsel and attorneys, re-
cording the verdict and judgment thereon, and otherwise
incident to such inquiry.

The Court has no jurisdiction over the taxation ^{Jurisdic-}
on a notion to review, but it is doubtful whether ^{tion.}
the Court cannot interfere by *certiorari* or *manda-*
mus where the master has improperly allowed or
disallowed costs. (*Owen v. London and North*
Western Railway Company, L. R. 3 Q. B. 54 ; *In*
re Ross and York, &c., Railway Company, 5 Rail.
Cas. 516.)

Payment and Recovery of Costs.

LIII. If any such costs shall be payable by the pro- Section 53
motors of the undertaking, and if within seven days after
demand such costs be not paid to the party entitled to

Section 53. receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special Jury.

Section 54. LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him by themselves or their attorneys, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the Superior Courts, and the sheriff shall appoint

a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the Superior Courts. Section 54.

The verdict will not be set aside on the ground that some of the jurymen were not qualified to act. The proper course is to challenge the persons objected to. (*In re Chelsea Waterworks Company*, 10 Exch. 732.) Jurymen
not
qualified.

The service of a notice under this section is not a waiver of the notice for a jury under section 68. Therefore, the company are not entitled to a period of twenty-one days from the date of notice under this section, but must issue their warrant within twenty-one days from the date of the notice for a jury. (*Glyn v. Aberdare Railway Company*, 6 C. B. N. S. 359.) Waiver of
notice for
jury.

Time for
issue of
warrant.

Deficiency of Special Jurymen.

LV. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the Court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges Section 55.

Section 55. against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Remedy
by chal-
lenge.

The Court will not set aside the verdict afterwards on the ground of want of qualification of jurymen, the remedy being by challenge. (*In re Chelsea Waterworks Company*, 15 Q. B. 731; *Cooling v. Great Northern Railway Company*, 10 Exch. 486.)

*Other Inquiries before same Special Jury by
Consent.*

Section 56. LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Attendance of Jurymen.

Section 57. LVII. No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

WHERE THE OWNER IS ABSENT OR
CANNOT BE FOUND.

- § 58. Purchase Money and Compensation to be determined by Valuation.
- § 59. Surveyor nominated by Two Justices.
- § 60. Declaration by Surveyor.
- § 61. Nomination, Declaration, and Valuation to be kept and produced to Owner.
- § 62. Costs.
- § 63. Damage by Severance.
- § 64. Absent Owner to be entitled to have Amount ascertained by Arbitration.
- § 65. Question for Arbitrators.
- § 66. Payment or Deposit of further Sum awarded.
- § 67. Costs.

*Purchase Money and Compensation to be
determined by Valuation.*

LVIII. The purchase money or compensation to be Section 58. paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

See sections 85 and 86, and notes.

Section 58.

No ab-
sence,
doubts as
to claimant
entitled.

Where there are doubts as to which of several claimants is entitled, but none of the claimants are absent, the compensation must be determined under section 23. If the parties proceed under this section, the deposit paid into Court will not be paid out until the value has been determined in the proper manner. (*Ex parte London and South Western Railway Company*, 38 L. J. Ch. 527.)

If surveyor
do not
enter
buildings.

A valuation will not be good if the surveyor do not enter the buildings. (*Cotter v. Metropolitan Railway Company*, 4 N. R. 454.)

Accom-
modation
works.

Where all access would be cut off from a piece of land which, though used for agriculture, had a prospective value as building land, the jury were directed to assess the value without reference to any accommodation works which the company might, under the Railways Clauses Act, be called upon to make, since any such accommodation works could only be constructed with reference to the land as agricultural land. (*Reg. v. Brown*, L. R. 2 Q. B. 630.)

Nomination of Surveyor by Two Justices.

Section 59.

LIX. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation

as aforesaid, and such surveyor shall determine the same Section 59. accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

The instrument appointing the surveyor need not specify the lands to be valued, nor the course of the undertaking in respect of which they are taken. (*Poynder v. Great Northern Railway Company*, 16 Sim. 3.) Description of lands to be valued.

Declaration by Surveyor.

LX. Before such surveyor shall enter upon the duty of Section 60. making such valuation as aforesaid, he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination—that is to say,

“I, *A.B.*, do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. *A.B.*

“Made and subscribed in the presence of _____.”

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Nomination, Declaration, and Valuation of Surveyor to be kept and produced to Owner.

LXI. The said nomination and declaration shall be Section 61 annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Costs.

Section 62. LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Damage by Severance.

Section 63. LXIII. In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

Injuri-
ously af-
fected."

For the extent and meaning of the term "injuriously affected," see section 68.

Unfore-
seen
damage.

Agreements for compensation for damage, "by severance or otherwise," include only damage known and capable of being foreseen. (*Lawrence v. Great Northern Railway Company*, 16 Q. B. 643.)

One sum
for price
and com-
pensation.

One sum may be awarded for the price of the land and for compensation for damage by severance. (*Bradshaw's Arbitration*, 12 Q. B. 563.)

*Absent Owner to be entitled to have Amount
ascertained by Arbitration.*

Section 64. LXIV. When the compensation payable in respect of

any lands, or any interest therein, shall have been ascer- Section 64.
tained by the valuation of a surveyor, and deposited in the
Bank under the provisions herein contained, by reason that
the owner of or party entitled to convey such lands or such
interest therein as aforesaid could not be found or was
absent from the kingdom, if such owner or party shall be
dissatisfied with such valuation, it shall be lawful for him,
before he shall have applied to the Court of Chancery for
payment or investment of the moneys so deposited under
the provisions herein contained, by notice in writing to the
promoters of the undertaking, to require the question of
such compensation to be submitted to arbitration, and
thereupon the same shall be so submitted accordingly, in
the same manner as in other cases of disputed compensa-
tion hereinbefore authorised or required to be submitted
to arbitration.

Question for Arbitrators.

LXV. The question to be submitted to the arbitrators Section 65.
in the case last aforesaid shall be, whether the said sum so
deposited as aforesaid by the promoters of the undertaking
was a sufficient sum, or whether any and what further sum
ought to be paid or deposited by them.

Payment or Deposit of further Sum awarded.

LXVI. If the arbitrators shall award that a further sum Section 66.
ought to be paid or deposited by the promoters of the
undertaking, they shall pay or deposit, as the case may
require, such further sum within fourteen days after the
making of such award, or in default thereof the same may
be enforced by attachment, or recovered with costs by
action or suit in any of the Superior Courts.

Costs.

LXVII. If the arbitrators shall determine that the sum Section 67.

Section 67. so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

LANDS TAKEN, BUT CLAIMS
UNSATISFIED.

*Mode of ascertaining Compensation where Lands
are taken without Satisfaction having been made.*

LXVIII. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to

Section 68.

Section 68. have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the Superior Courts.

Incorporation or exclusion from special Act.

The special Act, by section 2, incorporated this Act, but section 3 excluded the operation of the provisions relating to the purchase and taking of lands otherwise than by agreement, which words are the descriptive heading of sections 16—68 of this Act. Compensation was given by the special Act in certain special cases of injury to, and interference with, property, but no compensation was given for the injurious affecting of lands generally.

A landowner, whose premises were injuriously affected by works executed by the promoters under the powers of the special Act, claimed compensation under this section, and it was held that this section was not incorporated in the special Act.

But it was doubtful whether, if this section had been incorporated, compensation could have been claimed under it, the plaintiff not being entitled to compensation by any other statutory provision. (*Ferrar v. The Commissioners of Sewers in the City*

of London, L. R. 4 Exch. 227; *Reg. v. Lord Mayor of London*, L. R. 2 Q. B. 292; *Queen v. St. Luke's*, 7 L. R. Q. B. 148.) Section 68.

When the whole of this Act is incorporated in a special Act, no other enactment is required beyond this section to confer the right to compensation for lands injuriously affected by the works under the special Act. (*Queen v. St. Luke's*, 7 L. R. Q. B. 148.)

The 51st section and earlier sections have been held to be incorporated with this section. (*Re Hayward and Metropolitan Railway Company*, 4 B. & S. 795; *Railstone v. York, Newcastle, and Berwick Railway Company*, 12 Q. B. 404; *South Eastern Railway Company v. Richardson*, 15 C. B. 810); but not the 38th section, and notice of the issue of the warrant need not be given. (*Railstone v. York, Newcastle, and Berwick Railway Company*, 15 Q. B. 404.) Earlier sections incorporated with this section.
Notice of issue of warrant.

The offer of the company may be made when notice is given under section 46 of the place of inquiry. (*Hayward v. Metropolitan Railway Company*, 4 B. & S. 787.) Offer, when to be made.

It is doubtful whether, in a case which depends exclusively on a notice to take land, the Court will interfere to compel the company to adopt the subsequent proceedings directed by the Act for giving compensation to the landowner. But where such notice had been followed by a claim for compensation on the part of the landowner and a subsequent agreement between the parties, which claim and agreement were abandoned and repudiated on both sides, the Court refused to interfere to compel Specific performance.

Section 68. the company, who were in possession of the land, to summon a jury, holding that, in that case, the notice *per se* did not give the Court jurisdiction, and that the rights of the parties were to be regulated by the provisions of this section and section 85. (*Adams v. London and Blackwall Railway Company*, 2 M. & G. 118.)

Tenant for life.

Though this section does not, in so many words, say that a tenant for life shall be on the same footing as a tenant in fee, and that he can obtain compensation as well for himself as for those in remainder, it is to be inferred that he can do so from the next section, which relates to the application of the purchase money. (*Stone v. Corporation of Yeovil*, L. R. 2 C. P. D. 117.)

Wrongful possession.

This section applies only in cases where the company are rightfully in possession. A company, under the impression that C. was authorised by the tenant for life to treat for the sale of certain land, which was settled in remainder, and also subject to a mortgage, contracted with C. for the purchase of such land for £300, and took possession and erected works without having given notice to the remainder-men or mortgagees, and without having appointed arbitrators. C. had not been authorised to treat, and the parties interested in the land considered £300 to be too small a sum. The Court restrained the company from continuing in possession or proceeding with the works until compensation had been made. (*Perks v. Wycombe Railway Company*, 10 W. R. 788.)

Delivery of key.

A leaseholder let to a tenant from year to year, who received compensation from a company for his

interest, and gave to the company the key of the premises, the company indemnifying him against future rent. The premises were held to have "been taken" under this section. (*Barker v. Metropolitan Railway Company*, 5 N. R. 13.) Section 68.

In another case notice was given under the 18th section, and particulars of the owner's interest and of his claim were furnished to the company, together with a requisition that, if the amount were not paid, a warrant should be issued by the company to summon a jury to assess it. The company took no further steps in the matter, and it was held that the land was not "taken" under this section. (*Burkinshaw v. Birmingham and Oxford Junction Railway Company*, 6 Rail. Cas. 600.) Taking to be actual.

A person entitled to an easement over land taken under this Act is not entitled to maintain trespass for acts done on the land to the prejudice of such easement, but must proceed under this section. (*Thicknesse v. Lancaster Canal Company*, 4 M. & N. 472.) Easement.

The Court will not restrain parties who insist that their property has been injuriously affected within the meaning of this section from prosecuting their claims under this section, upon the mere ground that the Act has not provided the means of determining whether the property is injuriously affected or not. (*East and West India Docks and Birmingham Junction Railway Company v. Gattke*, 3 M. & G. 155; *South Staffordshire Railway Company v. Hall*, 1 Sim. N. S. 373.) Question of injury.

But whether the same rule would apply to a case where there are several grounds of claim, Several grounds of claim—some satisfied.

Section 68. some of which have been satisfied, does not seem to have been determined. (*Duke of Norfolk v. Tennant*, 9 Hare, 745.)

Specific
perform-
ance.

Interfer-
ence of
Court of
Equity.

Where there is no original equity affecting the claim of a party to compensation under this section, the statute does not create such an equity. But were there is an original equity affecting the claim, the statute does not take it away. Where therefore an agreement for such compensation has been completed and carried out, and the satisfaction perfected, there is no ground for the interference of the Court arising out of the provision of the statute. But where the defendant has received the consideration for perfecting the satisfaction, and refuses to perfect it, and a case for specific performance arises, there is nothing in the statute to exclude the interposition of the Court. (*Duke of Norfolk v. Tennant*, 9 Hare, 746.)

Whether,
after notice
to treat,
company
compel-
lable to
proceed
under this
section.

Subse-
quent
agreement
aban-
doned.

It is doubtful whether in a case which depends exclusively on a notice to take land, the Court will interfere to compel the company to adopt the subsequent proceedings directed by the Act for giving compensation to the landowner.

But where such notice had been followed by a claim for compensation on the part of the landowner, and a subsequent agreement between the parties, which claim and agreement were abandoned and repudiated on both sides, the Court refused to interfere to compel the company, who were in possession of the land, to summon a jury, holding that, in that case, the notice *per se* did not give the Court jurisdiction, and that the rights of the parties were to be regulated by the provisions of

this section and section 85. (*Adams v. London and Blackwall Railway Company*, 2 M. & G. 118.) Section 68.

In a case where in consequence of the construction of the works of a railway a constantly recurring injury arose by floods or heavy rains washing earth upon the plaintiff's property, an injunction was granted. (*Keates v. Holywell Railway Company*, 28 L. T. N. S. 123.) Recurring injury injunction.

A railway company in constructing its works on its own land may lawfully do acts which no private proprietor could have done. No doubt the company is bound in many cases to make compensation to the adjoining owners. But whereas the right to compensation can only arise where an individual in the place of the company would have been liable to damages, there are many cases in which the converse does not hold good, that is to say, in which, although there would be a right to damages against an individual, there is no right to compensation under this section against a railway company. The act of the company being lawful, subject to the payment of compensation, which is not payable till the act is completed, the company cannot be restrained by injunction. Statutory powers.

But a company having these powers is bound to exercise them with moderation and discretion. The expression "negligence" is hardly an appropriate word, but is sufficient to convey the idea. Injunction.

For instance, a company buying a house in a row, and making a cutting 50 feet deep, and just as wide as the house which is bought, with such want of precaution as to throw down the adjoining houses on each side, is not exercising its powers as "Negligence."

Lateral support.

Section 68. they ought to be exercised, or, in other words, is exceeding them. The powers are to be exercised with a reasonable regard for the rights of other persons. In particular cases it might be difficult to define what is and what is not reasonable. But that is the proposition as a general proposition. It is to the interest of the public that no private rights should stand in the way of the execution of the works, but when the company can construct its works without injury to private rights, it is bound to do so. (*Biscoe v. Great Eastern Railway Company*, L. R. 16 Eq. 636.)

Lateral support.

Injunction.

So where a railway company, in executing works authorised by their statutory powers, took insufficient precautions to secure the safety of an adjoining house, the Court granted an injunction to restrain the negligent exercise of their powers, and appointed a surveyor to report what was necessary to secure the plaintiff's premises, and the company having complied with the requisitions, the Court granted an inquiry as to damages. (*Biscoe v. Great Eastern Railway Company*, L. R. 16 Eq. 636.)

Excess of statutory powers, but no injury.

In case of an excess of statutory powers, but no injury having been occasioned to any individual, and none of irreparable consequence, the Attorney-General alone can obtain an injunction against the exorbitance. (*Ware v. Regent's Canal Company*, 3 D. & J. 212.)

Ancient lights.

Where promoters had power to take lands and erect buildings for the purposes of their undertaking, they could not be restrained by injunction from interfering with ancient lights, the remedy

being held to be under this section. (*Duke of Bedford v. Dawson*, L. R. 20 Eq. 351.) Section 68.

When the Legislature has authorised works to be constructed by a company, they are bound not only to make compensation, but to take such a course in the construction of the works as will do the least possible injury to the neighbouring property. (*Freehold General Land Investment Company v. Metropolitan District Railway Company*, 14 L. T. N. S. 96.) Principle on which powers are given.

If there is a remedy under the Act, that is ground for refusing an injunction, but under this section there is no ground for seeking for compensation, except for that which is done under the powers conferred by the Legislature. If there is wrong done which is not authorised by those powers, the common law right of action exists for it. (*Imperial Gaslight and Coke Company v. Broadbent*, 7 Cl. & F. 600.) Injunction.

No action can be maintained when the works are executed under statutory powers. (*Ferrar v. Commissioners of Sewers*, L. R. 4 Ex. 7; *Hammer-smith and City Railway Company v. Brand*, L. R. 4 H. L. 171.) No action.

Where a company had duly entered upon the land under section 85, and the three years limited by section 123 had elapsed without either party having taken any step to have the purchase money assessed, or a conveyance executed, the landowner was held to be able still to proceed under this section, but not to re-enter upon the land. (*Armitstead v. North Staffordshire Railway Company*, 16 Q. B. 526.) Effluxion of time, under s. 123.

Section 68.

Approval
of plans
by public
bodies.

Where it is provided in the special Act that the plans shall be approved by a public body, so far as the undertaking affects their rights or property, such approval does not deprive them of their rights under this section. (*Thames Conservators v. Pimlico, &c., Railway Company*, L. R. 4 C. P. 59; *Metropolitan Board of Works v. Metropolitan Railway Company*, L. R. 3 C. P. 629.)

Land
taken un-
der s. 85.

The provisions of this section apply to land taken under section 85. (*Adams v. London and Blackwall Railway Company*, 3 M. & G. 118.)

Tenant
from year
to year.

A tenant from year to year is not entitled to a settlement of his claim under this section, but under section 121. (*Queen v. Manchester, Sheffield, and Lincolnshire Railway Company*, 4 E. & B. 88.)

Possession
within
year of
expiration
of term.

Where, within less than one year of the expiration of the term, possession was taken of land held for a term of two years, the tenants were held to have no greater interest than as tenants for a year, or from year to year, and consequently could not claim compensation under this section, but only under section 121. (*Queen v. Great Northern Railway Company*, L. R. 2 Q. B. D. 151.)

Tenant
from year
to year
where land
is not
taken, but
is inju-
riously
affected.

Section 121 applies only to cases where the tenant is required to give up possession of either the whole or part of the land in his occupation. Where a company by the execution of their works caused the interest of a tenant from year to year to be injuriously affected, but neither took nor required him to give up possession of any part of his land, he was allowed to proceed for compensation under this section. (*Reg. v. Sheriff of Middlesex*, 11 W. R. 717.)

Where the foundation of buildings upon the land are loosened, or the lights obstructed, or the drains interfered with, or the buildings are made inaccessible by the lowering or raising of the ground immediately in front, or by some such physical deterioration, the owner is entitled to compensation under this section (*Rickett v. Metropolitan Railway Company*, L. R. 2 H. L. 198), even though by reason of the execution of the works the property has been enhanced in value. (*Eagle v. Charing Cross Railway Company*, L. R. 2 C. P. 638.)

Section 68.

Diminution of light.

An occasional flooding of lands caused by a proper execution of statutory powers is within this section, and is a subject of compensation. (*Ware v. Regent's Canal Company*, 3 D. & J. 212.)

Occasional flooding of lands.

A company entered upon a piece of land at Wandsworth, belonging to a seedsman, whose offices were in Covent Garden, where he kept his stock. In the land at Wandsworth he sowed small quantities of all the seeds in his stock on trial, after which he sold each parcel at a higher price by reason of his giving a warranty based on his experience. He was in consequence of the taking of the land unable to warrant his seeds, which were in consequence depreciated in value 50 per cent. The damage was held to be too remote, and, therefore, not recoverable. (*Re Clarke and Wandsworth Board of Works*, 17 L. T. N. S. 549.)

Injury to stock on premises not taken.

Remoteness.

The clauses of the Waterworks Clauses Act, 1847, are applicable to lands and streams in the same manner as those of this Act are applicable to

Streams.

Section 68. lands, and in the mode of compensation the same distinction is taken between lands and streams taken and used, and lands and streams injuriously affected. The diversion of a stream is a taking and using it within the meaning of the 85th section of this Act, which is incorporated in the Waterworks Clauses Act; and before such diversion can be made, the value of the stream must be ascertained and secured by the owners of the land through which it passes. Whether by diverting a stream the river into which it used to flow is injuriously affected or taken or used is doubtful. (*Ferrand v. Corporation of Bradford*, 21 Beav. 412.)

Diversion.

A corporation were empowered to construct waterworks for supplying a borough and a certain adjacent district with water. For this purpose they were empowered to purchase, enter upon, take, use, get, divert, and appropriate the streams, springs, waters, and sources of water shown on the deposited plans, and described in the deposited books of reference. The Waterworks Clauses Act, 1847, and this Act were incorporated with the special Act. Among the streams so authorised to be taken was one which, rising some distance above a mill and premises, of which the owner was seised as tenant for life, and flowing onwards to his mill and premises, was essential to the working of the mill. The corporation, under the powers of their Act, gave notice to the owner of their intention to divert and appropriate the whole of the stream, and they proceeded to take and divert a great portion, but not the whole of the water. The neces-

sary effect of this diversion of the water being to Section 68. cause serious and permanent injury to the mill, a correspondence took place between the solicitors of the respective parties, and an agreement was drawn up in which, after reciting the Act, and that the corporation for the purpose of the water-works intended from time to time to take, use, divert, and appropriate the waters in question, and that the owner as tenant for life of the mill was interested in such streams, each party proceeded, according to the terms of the 9th section of this Act, to appoint an able practical surveyor to determine the amount of compensation to be paid by the corporation for the damage which the owner or owners for the time being of the said premises might sustain by the abstraction of the whole of the said streams, springs, and waters.

The surveyors so appointed not being able to agree, application was made on behalf of both parties, according to the provisions of the section, to two justices to appoint a surveyor to determine the amount of compensation, which was accordingly done, and the amount was assessed at £939 5s. Under these circumstances, it was held that the corporation, if they took any of the water, were bound to take, or at all events to pay for, the whole before they could acquire the right to take any. If, having acquired the right to take the whole, they found it more convenient to take it by instalments, leaving the residue to follow in its usual course, and giving the landowner the benefit of it in the meantime, they might possibly have the right to do so, but they could not compel the

Section 68. landowner to accept partial compensation on each renewed taking.

Partial compensation.

Value relative to the land to be assessed.

In estimating the value of a stream, it is necessary to take into account the use to which it can be put relatively to the land itself. Except so far as the right of fishing may be concerned, the value of the water of a private stream is insignificant. It is only in so far as the water can be made available for the purpose of irrigation or for watering cattle, or turning a mill or the like, or as adding to the value of property as ornamental water, that water can be said to have value, and the compensation to be paid for its loss must therefore, practically speaking, be measured by the deterioration of the value of the land occasioned by such loss. Nevertheless, when an Act says that, when water is about to be taken, its value shall be assessed and paid, it seems to follow that, before any of it can be taken, the value must be paid, and that the water cannot be taken in parts, and compensation be made in proportion as the value of the land becomes from time to time affected by its loss. (*Stone v. Corporation of Yeovil*, L. R. 2 C. P. D. 99.)

Value to be assessed and paid before any is taken.

Diminution of flow subject of compensation.

The owner or occupier of a stream is not entitled to compel a company to purchase his interest in a stream because the company, not diverting the stream at all, take away water above his land, whereby the flow of water in the stream through his land is diminished; he can only claim compensation under this section. (*Bush v. Trowbridge Waterworks Company*, L. R. 19 Eq. 293.)

Injury to other part of land where part taken.

Although, as a general rule, compensation can only be obtained under this section in cases in

which, but for the authority of this Act, an action Section 68. would have lain in respect of them (*Broadbent v. Imperial Gas Company*, 7 D. M. & G. 436), this rule does not extend to cases of compensation sought for injury resulting to land by reason of acts done on a portion of the same land which has been taken by a company. And so in a case where a cotton mill, situate near land taken from the same owner, became exposed to risk of fire from the passage of engines along the part of land taken, and consequently the mill could not be insured except at an increased premium, the owner was held to be entitled to compensation under this section. (*Reg. v. Clerk of the Peace of Cheshire*, 4 N. R. 167.)

Nor can statutory compensation be claimed by reason of the noise and smoke from trains, whether part of the claimant's lands be taken or not. (*City of Glasgow Union Railway Company v. Hunter*, L. R. 2 Sc. App. 78.) Noise and smoke.

When the Legislature has sanctioned the use of a locomotive engine, there is no liability for injury caused by using it so long as every precaution is taken consistent with its use. (*Rex v. Pease*, 4 B. & Ad. 30.) Where no land taken. Injury caused not by construction, but during working.

And where damage by fire is occasioned by sparks emitted from an engine travelling on their railway, provided that they have taken every precaution in their power and adopted every means which science can suggest to prevent injury from fire, and are not guilty of negligence in the management of the engine, the railway company is responsible. (*Vaughan v. Taff Vale Railway Company*, 5 H. & N. 679.) Sparks from engine.

Section 68.Vibration.

Nor can a person whose land has not been taken recover compensation under this section in respect of damage or annoyance caused by vibration from passing trains, after the railway has been brought into use, even though the value of the property has been greatly depreciated thereby, on the ground that the claimant is not entitled to the position of a person claiming under this Act, this Act having reference only to parties who claim a right of property or an interest in property taken (see L. R. 2 Sc. App. 88). And the right of action for such damage is taken away. (*Hammersmith and City Railway Company*, L. R. 4 H. L. 171.)

Smoke and vibration.

But where a part of his land has been taken from a landowner under this Act, he is entitled to compensation for deterioration in the value of the land occasioned by smoke and vibration caused by passing trains, or loss of privacy and increase of dust and noise occasioned by the construction of an embankment and road adjoining to and formed upon part of a garden. (*Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 7 H. L. 418.)

Ferry appurtenant to land.

A ferry, if attached to the land part of which is taken, is a private right, in respect of which the owner may obtain compensation under this section. (*Cooling v. Great Northern Railway Company*, 6 Rail. Cas. 246.)

Building site taken; reservoir not taken.

Land was taken by a company on which probably cotton mills would have been built, and on other land belonging to the same owner the owner had built a reservoir for the purpose of supplying water to the cotton mills when built. In ascertaining the compensation, the umpire was held to

be right in receiving evidence as to the profits Section 68. which might have been derived from supplying water to the mills when built, and awarding compensation for the loss of those prospective profits. (*Ripley v. Great Northern Railway*, L. R. 10 Ch. 435.)

A landowner part of whose land is taken, such River frontage. part forming the whole river frontage of his property, the river being navigable, is entitled in respect of the land not taken to compensation for deterioration in value by reason of deprivation of the means of access to the river. (*Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 7 H. L. 418.)

In order to found a claim under this section for What is sufficient to found a claim. Permanent injury. an interest in land injuriously affected, there must be an injury and damage not temporary, but permanent, peculiarly affecting the house or land itself Affecting property itself. Not a personal injury. in which the person claiming compensation has an interest. A mere personal inconvenience, obstruction, or damage to a man's trade or the goodwill of his business will not be sufficient, although any one of them might, but for the Act which authorises the doing of the thing occasioning the injury, have been the subject of an action against the person occasioning it.

The test which appears to explain and reconcile Test. the cases upon the words injuriously affected is this, that where by the construction of the works there is a physical interference with any right, Physical interferences. public or private, of which the owners or occupiers of property are by law entitled to make use in connection with such property, and which gives an

Section 68. additional market value to such property apart from the uses to which any particular owner or occupier might put it, there is a title to compensation if by reason of such interference the property as a property is lessened in value. (*Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243; *Ricket v. Metropolitan Railway Company*, L. R. 2 H. L. 175; *Bigg v. Corporation of London*, L. R. 15 Eq. 376; *Reg. v. Metropolitan Board of Works*, L. R. 4 Q. B. 358.)

Dock. In one case the plaintiff resided and carried on business as a carman and contractor for supplying builders with lime, bricks, and other building materials, and as a dealer in sand and ballast, near to a dock leading into a river, which dock was largely used by the plaintiff in the way of his business. The dock was a free and open public dock, but was principally used by the plaintiff and the other persons whose premises were in close proximity to it. The plaintiff had no right or easement in the dock other than as one of the public, nor was there appurtenant or otherwise belonging to his premises any other right or privilege in or to the dock. By reason of the proximity of the dock to the plaintiff's premises (from which its head was only twenty feet distant), and the access thereby given to and from the river, the premises were rendered more valuable to sell or occupy with reference to the uses to which *any* owner might put them. In the execution of the works authorised by the special Act, a solid embankment was carried along the foreshore of the river, thus permanently stopping up and destroying

the dock. By reason thereof access through the dock to and from the river was destroyed, and the plaintiff's premises became and were, as premises either to sell or occupy with reference to the uses to which any owner or occupier might put them in their then state and condition, permanently damaged and diminished in value. Under these circumstances the plaintiff was held to be entitled to compensation. (*Metropolitan Board of Works v. McCarthy*, L. R. 7 H. L. 243.) Section 68.

In another case the tenant of a house stated that the road in front of the premises, which had formerly been fifty feet wide, had been narrowed by means of an embankment made by a company upon a portion of it to thirty-three feet, that the light to the lower room of the house had been thereby sensibly diminished, and that the narrowing of the road was a great discomfort and occasioned inconvenience by reason of carriages being compelled to go some distance beyond the gate before they could turn. An auctioneer and surveyor, who knew the premises well, and who had acted for the sellers when the plaintiff bought the property, stated that he considered that the house was seriously damaged for occupation purposes by the embankment, and consequently depreciated in value by such embankment, and also by the narrowing of the road. The owner was held to be entitled to compensation. (*Beckett v. Midland Railway Company*, L. R. 3 C. P. 82.) Narrowing
of road.

The occupier of a public-house was held entitled to compensation by reason of the vibration caused by trains passing through a tunnel under his house Beer
turned
sour.

Section 62. turning the beer in his cellars sour. (*London and North Western Railway Company v. Bradley*, 3 Mac. & G. 336.)

**Ferry.
Railway
foot-
bridge.**

About half a mile above an ancient ferry a railway company under their Act constructed across a river a railway bridge and a foot-bridge, the foot-bridge being used by persons going to the railway station, and also to other places. The traffic across the ferry falling off, the ferry was given up, and compensation claimed by the owners, but was held not to be recoverable: first, on the ground that an action could not have been maintained for disturbance of the ferry in respect of the traffic, either by the railway or by the foot-bridge, if they had been erected without the authority of an Act; secondly, on the ground that the injury to the ferry being occasioned, not by construction, but by the working of the railway, the ferry had not been injuriously affected under this section. (*Hopkins v. Great Northern Railway Company*, L. R. 2 Q. B. D. 225, overruling *Reg. v. Cambrian Railway Company*, L. R. 6 Q. B. 422.)

**Premises
over-
looked.**

No compensation can be claimed for deterioration in value of property in consequence of it being overlooked by persons standing on the railway and station platform. (*Penny v. South Eastern Railway Company*, 9 El. & Bl. 660.)

**Lateral
support of
sewer.**

A railway company were not held liable to pay compensation for damage caused by the bursting of a sewer by reason of the excavation of their railway close to it. (*Metropolitan Board of Works v. Metropolitan Railway Company*, L. R. 4 C. P. 192.)

In the case of *Rickett v. Metropolitan Railway Company*, L. R. 2 H. L. 175, it was decided that the temporary obstruction of a highway, which prevented the free passage of persons along it, and so incidentally interrupted the resort to a public-house, was not the subject of an action at common law, as an individual injury by the owner, distinguishing his case from that of the rest of the public, and that therefore he altogether failed to bring himself within the general principle upon which a claim to compensation under this Act had been determined to depend, and that this section was inapplicable, as the damage arose from the temporary operations of the company, and not from their permanent works. And in the same case, the Lord Chancellor (Lord Chelmsford) reviewed the authorities on the subject in the following words:—

Section 68.
Injuries to
trade.

“It is most desirable, as Lord Chief Justice Erle said in the case of *Cameron v. The Charing Cross Railway Company*, 16 C. B. N. S. 430, that, if possible, some definite and precise rule should be laid down as to the true limits within which claims against railway and other companies for compensation in respect of damage caused by their works are to be confined.

“It appears to me to be a hopeless task to attempt to reconcile the cases upon the subject. I must endeavour, by an examination of them, to determine which in my judgment are most in accordance with principle.

“I think that the criterion of a party's right to damage under the clauses of the Railway and

Section 68. Companies Acts upon which this case depends is correctly stated by Lord Campbell in *Re Penny and South Eastern Railway Company*, 7 E. & B. 660, and that in his words, unless the particular injury would have been actionable before the company had acquired their statutory powers, it is not an injury for which compensation can be claimed. At the same time the observation of my noble and learned friend, Lord Cranworth, in the case of *The Caledonian Railway Company v. Ogilvy*, 2 Macq. Sc. App. 235, must not be lost sight of, that it does not follow that a party would have a right to compensation in some cases in which, if the Act of Parliament had not passed, there might have been not only an indictment, but a right of action.

“In the first place, then, it is material to inquire whether the plaintiff in Error could have maintained an action against the defendants for the alleged consequences of their acts if they had been done without the authority of Parliament.

“As far as I have been able to examine the cases, in all of them except two, in which an individual has been allowed to maintain an action for damage which he has specially sustained by the obstruction of a highway, the injury complained of has been personal to himself either immediately or by immediate consequence.

“The two excepted cases are those of *Baker v. Moore* (mentioned by Mr. Justice Gould, in *Iveson v. Moore*, 1 Lord Raym. 486, 491), and *Wilkes v. Hungerford Market Company*, 2 Bing. N. C. 281. In the former of these cases the

defendant had erected a wall across a public way, Section 68. in consequence of which several of the plaintiff's tenants left his houses and he lost the profits of them. In the latter, the plaintiff, a bookseller, having a shop by the side of a public thoroughfare, suffered loss in his business in consequence of passengers having been diverted from the thoroughfare by the defendants continuing an authorised obstruction across it for an unreasonable time. In both these cases it was held that the action was maintainable. The case of *Baker v. Moore* appears to me to be even more doubtful than *Wilkes v. Hungerford Market Company*; and, as to this latter case, Chief Justice Erle, in delivering the judgment of the majority of the judges in the present case, observed: 'If the question were raised in an action now, we think it probable that the action would fail, both from the effect of the cases which preceded *Wilkes v. Hungerford Market Company*, and also from the reasoning in the judgment in *Ogilvy v. Caledonian Railway Company*, in this observation upon *Wilkes's case* I entirely agree. An endeavour was made by Lord Denman to reconcile that case with the decision which he pronounced in the case of the *London Dock Company*, 5 Ad. & E. 163, 178, but in my opinion not very successfully. It is impossible to discover any distinction between the consequential damages which constituted the cause of action respectively in the two cases. Lord Denman said, in *Wilkes's Case*, the Act producing the injury was unauthorised by any statute for the period complained of, it was a public nuisance which might have been indicted,

Section 68. and that was the difficulty cast upon the plaintiff. To which a sufficient answer was given showing that the specific injury of which he complained was one felt by himself alone, and beyond the common and public nuisance. If, however, the consequential damage is too remote to be the foundation of an action (and it was held to be in the case of *Rex v. London Dock Company*), it is quite immaterial whether no statutory powers have been given, or the statutory powers given have been exceeded. In neither case would an action lie.

“My opinion being that the damage which is the foundation of the claim to compensation made by the plaintiff in Error is too remote to be the subject of an action, I might be contented to rest my judgment against him upon this alone. But the diversity of opinion which has prevailed amongst the judges as to the application of the clauses of the Acts in question to such a claim as is now under consideration renders it incumbent upon the House to pronounce an authoritative final decision upon the whole case.

“Before, however, expressing my opinion, I must shortly examine the leading cases which exhibit the variety of judgments in the different Courts upon the construction of the clauses in question.

“It must be observed that the judges in the Court of Queen’s Bench in the present case confined their attention entirely to the 68th section of the Lands Clauses Consolidation Act, 1845, which provides for the mode of assessing compensation, while in the argument at your Lordships’

bar the claim of the plaintiff in Error was rested Section 68. either upon the 6th or the 16th section of the Railways Clauses Consolidation Act, 1845. There appears to me, however, to be no substantial difference between the language of the 68th section of the former and the 6th section of the latter Act. The 68th section of the one Act applies to any party entitled to compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works. And the 6th section of the other Act compels a company to make to the owners and occupiers, and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands, and for all damage sustained by reason of the exercise, as regards such lands, of the powers vested in the company. These sections appear to me to apply not to temporary but permanent works of companies. The 16th section of the Railway Clauses Consolidation Act, which I shall have occasion hereafter to consider more particularly, relates to the damage arising during the execution of the works.

“Upon an examination of the cases it will be seen that in most of them, where the claim to compensation was admitted, there was an actual injury to the house or land itself, either immediate or immediately consequential upon the acts done. Thus in *Reg. v. Eastern Railway Company*, 2 Q. B. 347, the Railway Act provided that the company should make full satisfaction to persons interested

Section 68. in lands taken, used, or injured, for all damages sustained by executing the powers of the Act. The company had lowered a road whereby the claimant's land was injured and deteriorated, and access impeded, and additional fences rendered necessary. In *Glover v. North Staffordshire Railway Company*, 16 Q. B. 912, the plaintiff was the owner of land appertaining to which was a right of way over a road. The company, under the provisions of their Act, constructed a railway crossing the road on a level, and erected gates on each side of the railway, which were kept locked under the provisions of the Act, the servant of the company keeping the key, and the plaintiff also having a key. The plaintiff claimed compensation, and required the company to issue a warrant for a jury, and upon neglect to do so, brought debt for the amount claimed. The jury found the facts specially, and also that the land was depreciated in value. The Court, on that finding, held that the land was injuriously affected, within the meaning of this Act and the Railways Clauses Consolidation Act. It might appear, at first sight, that the decision in the case of *The Caledonian Railway Company v. Ogilvy* was opposed to this last case. There a *public* road was, under the sanction of an Act of Parliament, crossed by a railway on a level, and gates were placed across the road, and it was held by this House, reversing the interlocutor of the Court of Session, that the owner of a house near the newly erected gates had no claim for compensation for the inconveniences occasioned to him. But in this last case the owner of the house had no other right over

the road than that which belonged to the public Section 68.
generally, and the erection of the gates across the road where the railway crossed it upon a level was essential to the public safety. It is doubtful whether the owner of the house sustained any injury different in kind, though it might be greater in degree, from that of the rest of the public; and, therefore, it was questionable whether he could have maintained an action if the obstruction had been created without the authority of Parliament. But in *Glover v. The North Staffordshire Railway Company* the plaintiff had a *private* way appurtenant to his farm, which was obstructed by the company's works. His land, therefore, was injuriously affected, and as Mr. Justice Wightman said:— 'Supposing no Act of Parliament had passed, and that had been done which was done, an action would have been maintainable' (and see *Wood v. Stourbridge Railway Company*, 16 C. B. N. S. 239).

"The case of *Reg. v. The Great Northern Railway Company*, 14 Q. B. 25, resembles the one last mentioned, because the manner in which the land was alleged to be injuriously affected was by the works of the company obstructing the access to a ferry which was appurtenant to the claimant's house.

"The two cases next to be considered are those upon the authority of which the Court of Queen's Bench (or, at all events, the Lord Chief Justice) decided the present case, *Chamberlain v. West End of London and Crystal Palace Railway Company*, 2 B. & S. 605—617; and *Senior v. The Metro-*

Section 68. *politan Railway Company*, 2 H. & C. 258. *Chamberlain's case* was a claim for compensation, which was referred to arbitration under the Act. The award found that the claimant was lessee of four houses on the highway across which the railway was constructed, and of eight other houses in the course of erection for the purpose of being used as dwelling-houses, fronting a new road running at right angles to the highway, and that by reason of the obstruction of the highway by the construction of the railway across the same, the access to the houses of the plaintiff was, notwithstanding the substitution of the deviation road, rendered less convenient for the occupiers, and many persons would be prevented from passing the same, and the houses had thereby been rendered less suitable for being used and occupied as shops, and the value of the houses had been greatly diminished. The Court of Queen's Bench gave judgment for the plaintiff without saying upon which of the heads of damage the judges thought he was entitled to compensation. But upon Error in the Exchequer Chamber, Chief Justice Erle, in delivering the opinion of the Court of Error that the judgment of the Court below ought to be affirmed, relied entirely upon the facts found by the umpire, that the value of the houses was depreciated because the highway was stopped up, and the easy access which before existed to them was taken away, and the houses were, therefore, injuriously affected within the principle of law which governs cases of this description. This must, however, be classed with the preceding cases, where the house or land

of the person claiming compensation was itself Section 68.
injuriously affected by works. But the case of *Senior v. Metropolitan Railway Company*, 2 H. & C. 258, cannot be otherwise regarded than as precisely resembling the present. There the plaintiff carried on the business of a tailor, selling ready-made clothes, exhibited by him in a window of his shop in Ray Street. The company in the execution of works (in the neighbourhood of those in the present case), stopped up a bridgeway leading from Ray Street to Warner Street, and blocked up the carriage-way, and partially obstructed the footway of the street called Coppice Row, and in consequence Ray Street was less used and frequented as a thoroughfare, and the number of persons passing through the street was considerably diminished. During this period the plaintiff's business fell off, principally in respect of the sale in the shop, and was less than it had been before the obstruction, and less than since it had been removed. Upon the inquiry before the sheriff the jury found (as in this case), that no structural damage had been sustained, and stated in delivering the verdict, that they assessed the compensation at the sum of £60 for the loss of trade, by reason of such obstruction only, and not for any other matter or cause. The Barons of the Exchequer agreed that the plaintiff was entitled to judgment for the £60; but, apparently, not exactly for the same reasons. The Chief Baron said that loss of trade was an injury to the value of the land itself, and, therefore, the subject of compensation under the Lands Clauses Consolidation

Section 68. Act. Baron Bramwell thought the case was decided by the case of *Chamberlain v. The West End of London and Crystal Palace Railway Company*, from which it appears to me to be distinguishable, for the reason I have given. Baron Channell, adverting to an argument for the company, that loss of trade, though some evidence to the plaintiff's interest, might be counterbalanced by other considerations, said: 'Those considerations ought, at least, to have been stated in the case, so as to enable us to deal with them. The present and qualified statements show that, in point of fact; the plaintiff's premises were injuriously affected by the execution of the defendants' works.' Baron Wilde dealt only with the company's claim to a set-off by reason of the land being subsequently benefited, without adding a word upon the main question.

"This case, then, in which the judgment is not very satisfactory, is the only direct authority against the judgment of the Court of Exchequer Chamber under consideration. When I say the only authority, I have not forgotten the case of *Cameron v. The Charing Cross Railway Company*, where, upon a similar state of facts, the Court gave judgment for the plaintiff. But the Chief Justice stated that the Court decided against the argument on the part of the company, on the ground that the matter had already undergone consideration in two Courts of co-ordinate jurisdiction, by whose judgment the Court was bound, the Chief Justice being evidently not satisfied with those decisions.

"Thus the question stands upon the cases relied

upon in the argument for the plaintiff in Error, Section 68. and, if I am right in treating the decision in *Senior v. The Metropolitan Railway Company* as the only one which can be regarded as a direct authority in his favour, there is opposed to that decision the case of *Rex v. London Dock Company*, which is, at least, an equally strong authority the other way. The words of the Act upon which the compensation was claimed in that case appear to me not to make any substantial difference between the two cases. It was enacted that if any person should be injured in his estate or interest by the making of any such cut, sluice, bridge, road, or other work, such person should be compensated by the company for such injury. The company under the powers of the Act pulled down a number of houses, and made a cut which intercepted several thoroughfares, and obliged those who had previously used them to take circuitous routes. The tenants of a neighbouring public-house demanded compensation for injury to their estate and interest, inasmuch as the pulling down of premises and the obstruction of access had diminished the direct and casual custom of the house, and also as the occupiers of houses were cut off from thoroughfares to the houses formerly used, and thereby the value of the premises to sell or let as a public-house or shop, but not as a private residence, was lessened. Lord Denman in delivering the judgment of the Court of King's Bench said, 'It is distinctly stated that it is only to sell or let as a public-house or shop—in other words, in respect of its goodwill—the pecuniary value of the house is diminished;' and added, 'We are of opinion that

Section 68. the case of the complainants is not brought within any reasonable construction of the section. The inconvenience they complain of is not only one common in a greater or less degree to every inhabitant in the neighbourhood, but it is the necessary consequence of the lawful act done by the company. It was impossible to make the basin and cut, which it is the very object of the statute to enable the company to make, without destroying the neighbourhood and stopping up these thoroughfares.'

"Such was the state of the authorities when the present case was decided, in which the four judges of the Court of Queen's Bench and two of the six judges in the Court of Error were opposed to the majority, that is, to the four judges in the Exchequer Chamber.

"The question entirely depends upon the correct construction of the compensation clauses of the Lands and Railway Clauses Consolidation Acts. I have already observed that the 6th section of the Railways Clauses Act and the 68th section of the Lands Clauses Act have the same object, and apply to the permanent works of the companies. The case was argued at your Lordships' bar, both upon the 6th and 16th sections of the Railways Clauses Acts, but, in my opinion, the 6th section is inapplicable. It relates to owners and occupiers of and all other persons interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof (not in the course of the construction thereof), and the company is to make full compensation for the value of the

lands so taken or used, and for all damage Section 68. sustained by such owners, occupiers, and other parties, by reason of the exercise as regards such lands of the powers vested in the company. This evidently applies to lands immediately affected by the permanent construction of the railway.

“The 16th section is the one which, if any, must apply to the case of the plaintiff in Error. That section empowers the company for the purpose of constructing the railway to execute certain specified works, and contains a proviso that, in the exercise of the powers granted, the company shall do as little damage as can be, and make full satisfaction to all parties interested for all damage by them sustained by reason of the exercise of such powers. That the damage contemplated was not such a consequential damage as that on which the plaintiff's claim is founded is, at least, probable, from the circumstances adverted to by Lord Denman in *Rex v. London Dock Company*, that as it was impossible to make the railway without obstructing, at least temporarily, the neighbourhood, and stopping up the thoroughfares, that necessary consequence must have been foreseen, and if it had been intended to give any compensation for it, it would have been clearly and distinctly expressed. And a critical examination of the words of the section leads to the conclusion that compensation for remote consequence resulting from a company's works was not intended. The words are, ‘shall do as little damage as can be,’ which, if applying to a consequential injury, would appear to limit the

Section 68. resulting damage to an immediate consequence, and not to extend to a remote one.

“The case of the *East and West India Docks and Birmingham Junction Railway v. Gattke*, 3 Mac. & G. 155, 6 Rail. Cas. 371, before Lord Truro, may seem at first sight to be an authority for a party being entitled to compensation for the same sort of remote damage as that in the present case. There the directors of the company had commenced the works, and were at the date of the filing of the bill in the course of constructing their railway, and one of the grounds of complaint was that the defendant’s customers had been compelled by the obstruction occasioned by the works to quit the side of the road upon which the defendant’s shop was situated before the works arrived at his shop, and to cross to the opposite side of the road in order to pass along, by reason whereof during several weeks he had sustained a great loss in his trade. The Lord Chancellor dissolved an injunction which had been granted by Vice-Chancellor Wigram, and allowed the plaintiff in the action, the defendant before him, to proceed to have the amount of compensation assessed by a jury. But, in addition to the above-mentioned ground of complaint, the plaintiff in that case alleged that he had sustained injury in consequence of the dust and dirt occasioned by the works having damaged his goods; and he also alleged that he had been injuriously affected by the company having stopped up a passage or lane, along which he was entitled to a right of way or access to the entrance at the back of his premises, both of which were direct and not consequential

injuries. And the Lord Chancellor, without distinguishing the heads of claim, said, 'I see no reasonable doubt that if the defendant has in fact sustained damage from the causes alleged, he is a person entitled to claim compensation, and that he is entitled to have the question submitted to a jury.'" (And see *Bigg v. Corporation of London*, L. R. 15 Eq. 376.) Section 68.

For the purpose of determining the compensation the arbitrators are to estimate the value to the owner at the time when the premises are taken. And, therefore, where a house had been occupied as a public-house, and held under a lease for ten years from the owner, subject to a covenant by the lessee not to sell any ale but his landlord's during the tenancy, the arbitrators were held to be justified in taking into consideration the loss which would be sustained by him through the determination of such covenant. (*Bourne v. Corporation of Liverpool*, 2 N. R. 425.) Beneficial covenant.

The compensation under this section must be assessed once for all. Therefore, where damage has been subsequently sustained, but which could reasonable have been foreseen at the time of assessing the compensation, the owner of the land so damaged is not entitled to further compensation. (*Croft v. The London and North Western Railway Company*, 3 B. & S. 436.) Subsequent injury capable of being foreseen.

But if the damage was not capable of being foreseen, it is doubtful whether compensation can be obtained under this section. (*Lancashire and Yorkshire Railway Company v. Evans*, 15 Beav. Not capable of being foreseen.)

Section 68. 322; *Croft v. London and North Western Railway Company*, 1 N. R. 319.)

Plea that does not exceed £50.

A company in an action for the amount of compensation assessed by the sheriff's jury, and where the damages claimed and awarded exceeded £50, were precluded from pleading that the plaintiff was not entitled to compensation exceeding £50. Such a plea could only be good, it seems, where the compensation claimed does not exceed the sum of £50. (*Read v. Victoria Station and Pimlico Railway Company*, 1 H. C. Exch. 840.)

Error in address of notice.

A notice of particulars required by this section was addressed to "The Blackburn and Clitheroe Railway Company," the real title of the company being "The Blackburn Railway Company." The notice was held to be sufficient. (*Eastham v. Blackburn Railway Company*, 9 Exch. 758.)

Quantity must be stated.

The notice under this section must state the quantity as well as the quality of the interest, otherwise it will be bad. (*Healey v. Thames Valley Railway Company*, 5 B. & S. 769.)

Question of right to compensation.

The arbitrator, as in the case of the sheriff's jury, may settle only the amount, and not the question of the liability of the company to pay compensation. And if the company refuse to pay, the owner must enforce his claim by action, and not by an application to the Court to enforce the award. (*Newbolt v. Metropolitan Railway Company*, 2 N. R. 168; *In re Byles*, 11 Exch. 464.)

S. 23.

Section 23 applies to arbitrations under this section. (*Evans v. Lancashire and Yorkshire Railway Company*, 1 E. & B. 754.)

Proceedings abortive.

Where the proceedings in the arbitration have

become abortive by reason of the non-appointment Section 68. of an umpire within the time limited by the statute the landowner is not bound to proceed anew under this section. But in the event of a refusal by the company, is entitled to a *mandamus* to compel them to issue their warrant to summon a jury to assess compensation. In such a case a neglect to issue a warrant after a demand made upon the solicitors of the company is a sufficient refusal to entitle the claimant to the writ. (*Ex parte Senior*, 7 D. & L. 36.)

Though in form an umpire has no power to Award; order to pay. order a company to pay compensation, such informality will not vitiate the award so far as it ascertains the amount of damages, assuming the company's liability. (*In re Harper and Great Eastern Railway Company*, L. R. 20 Eq. 39.)

The 51st section and earlier sections have been Earlier sections incorporated. held to be incorporated with this section (*Re Hayward and Metropolitan Railway Company*, 4 B. & S. 795; *Railstone v. York, Newcastle, and Berwick Railway Company*, 15 Q. B. 404; *South Eastern Railway Company*, 15 C. B. 810). But not the 38th section, and notice of the issue Notice of issue of warrant. of the warrant need not be given. (*Railstone v. York, Newcastle, and Berwick Railway Company*, 15 Q. B. 404.)

How far the verdict of the sheriff's jury and the judgment thereon precludes the company when Right of jury to decide question of damages. an action is brought against them to recover the amount of compensation assessed from setting up the defence that the interest of the plaintiff in the lands has not been injuriously affected, is a ques-

Section 68. tion which has been raised in several cases in Chancery, and opinions upon the point have been expressed by Lord Cottenham, in *The London and North Western Railway Company v. Smith*, 1 M. & G. 216; by Lord Truro, in *The East and West India Docks and Birmingham Junction Railway Company v. Gattke*, 3 M. & G. 156; and in *The London and North Western Railway Company v. Bradley*, 3 M. & G. 337. The opinions so referred to were not express decisions upon the point, seeing that the question in those cases appears to have been whether there was such an equity as ought to have induced the Court of Chancery to restrain the claimant in each case from pursuing the legal remedy given to him by this section until he should have established his right to some compensation; and it was with reference to the inconvenience of going to a jury and assessing the compensation, leaving the question of the plaintiff's right to be afterwards decided, that the point appears to have come under the consideration of the Court of Equity. In the case of *The Queen v. London and North Western Railway Company*, 3 E. & B. 443, a majority of the judges of the Queen's Bench were of opinion that in an action on the judgment given by the sheriff, the company sued might in such action try the claimant's title to compensation, although the compensation had, in fact, been assessed, and though some inconvenience might arise from such a course. Mr. Justice Coleridge's judgment in that case (in which the Lord Chief Justice Campbell and Mr. Justice Wightman concurred) reviewed the cases in Equity. The

Court quashed the verdict of the jury, who had found that a right of way claimed by the claimant did not exist, and had not been proved, and that on that ground the plaintiff had not sustained any damage, but had also found a certain amount of damage on the supposition that they were to assume the existence of the right of way. The Court held that the jury had no power to inquire into the right, but were bound to assess compensation upon the assumption that it existed. Mr. Justice Erle differed from the other judges, and held that the jury had power to inquire into the right. In commenting upon the cases of *The East and West India Docks and Birmingham Junction Railway Company v. Gattke*, 3 M. & G. 155, and *The South Staffordshire Railway Company v. Hall*, 3 M. & G. 353, Mr. Justice Erle observes that in these cases it is laid down that if the jury upon the inquisition try the question of right over which they have no jurisdiction, the company in an action for the amount found by the verdict may raise that same question of right, and succeed. And he adds that this principle so expressed is correct, but in his opinion required further explanation to define what questions are within the jurisdiction of the inquisition and what are not. In *Chapman v. Monmouthshire Railway and Canal Company*, 3 D. & J. 312, the Court of Exchequer decided in accordance with the decision of the majority of the Court of Queen's Bench in *The Queen v. London and North Western Railway Company*. In *Mortimer v. South Wales Railway Company*, 1 E. & E. 375, Lord Campbell, speaking of

Section 63.

Jury have
no power
to try
question of
right to
compensa-
tion.

Section 68. the first plea in that case, which was in effect that the plaintiff had sustained no damage, says that such plea is a good plea. This, however, cannot be treated as an express decision on the point, as in that case the issue on the plea was found in favour of the plaintiff, and the case turned upon an objection which was not properly raised upon any of the pleas there pleaded. But in the case of *Read v. Victoria Station and Pimlico Railway Company*, 1 H. & C. Exch. 840, it was held after a consideration of the authorities that the company is not precluded from denying in an action for the amount of compensation assessed by the sheriff's jury that the plaintiff's interest in the land was injuriously affected (and see *Horrocks v. Metropolitan Railway Company*, 4 B. & S. 315).

Time. Second notice for special jury.

Where, in consequence of notice given by the claimant of his desire to have the amount of compensation settled by a jury when the company were on the eve of issuing their warrant to the sheriff, the claimant served upon them a second notice stating his desire to have the question settled by a special jury, and the company erroneously supposing that the second notice abrogated the first, and that the time would run from the date of the second notice, did not issue their warrant until after the expiration of twenty-one days from the date of the first notice of the company, the company were ordered to pay the claimant the amount claimed by him. (*In re Aberdare Railway Company*, 8 W. R. 603; *Glyn v. Same*, 6 C. B. 359.)

Several claims to

Where certain land in the possession of one

person having been injuriously affected by the corporation's works, the damage was assessed by a jury, but as another person set up a title to the property in question, the corporation filed a bill to have it declared which of the persons were entitled to the compensation awarded, it was held that the question of title to the money being only incidental to the title to the land, the case did not come within Sir John Rolt's Act; and that the person in possession had a right to put the other person to prove his title in an action of ejectment. (*Metropolitan Board of Works v. Sant*, L. R. 7 Eq. 197.)

Section 68.

money
awarded.Sir John
Rolt's Act.Eject-
ment.

Under section 85 interest at the rate of £5 per cent. is payable for neglecting to issue the warrant to the sheriff within twenty-one days. (*In re Aberdare Railway Company*, 8 W. R. 603.)

Interest.

In an action to recover the full sum claimed because of the default of the company to summon a jury within twenty-one days, a plea "that the claim was not a *bond fide* claim within the statute, but in fraud of the defendants, and without any reasonable cause," will not be allowed. (*Hooper v. Bristol Port Railway and Pier Company*, 35 L. J. C. P. 299.)

Plea of
mala fides.

The offer of compensation must be an unconditional offer of compensation for the injury done, and is bad if it be an offer of one sum for compensation and costs; and the claimant is entitled to his costs, although the verdict be for an amount less than that offered. (*Balls v. Metropolitan Board of Works*, L. R. 1 Q. B. 33. See under section 51.)

Offer of
compensa-
tion.

Section 68.

Where the amount claimed is not paid or agreed to be paid within twenty-one days, it is the duty of the claimant, before nominating an arbitrator on his behalf, to attempt to procure the appointment of a single arbitrator.

Verdict for
more than
amount
offered.

Where a jury give a verdict for a larger sum than that offered by the company, the latter must pay all the costs of the inquiry. (*Richardson v. South Eastern Railway Company*, 2 Prac. Cas. 409.)

APPLICATION OF MONEY COMING TO
PERSONS NOT ABSOLUTELY ENTITLED,
PREVENTED FROM TREATING, OR NOT
MAKING TITLE.

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows :—

- § 69. Money to be paid into Bank. How to be applied in Case of Persons not absolutely entitled.
- § 70. Order for such Application. Interim Investment.
- § 71. Sums under £200 and above £20.
- § 72. Sums under £20.
- § 73. Money payable to Party not absolutely entitled, Withdrawal of Opposition to Bill, &c., to be paid into Bank. Power to Court to allow Sum to Tenant for Life for Damage by Inconvenience.
- § 74. Application of Money paid in for Purchase of Leases and Reversions.
- § 75. In Default of Conveyance or satisfactory Title, Deed Poll to be executed.
- § 76. In Default of Conveyance or good Title, or in Case Owner refuse Purchase Money, or be absent, Money to be deposited in Bank.
- § 77. Receipt to be given, and on Deed Poll being executed, Lands to vest in Company as against such Persons.
- § 78. Investment and Application of such Money.
- § 79. Until contrary shown, Party in Possession to be deemed the Owner.
- § 80. Costs.

*Application of Money paid into the Bank in Case
of Persons not absolutely entitled.*

LXIX. If the purchase money or compensation which **Section 69.** shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail,

Section 69. married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery in England, if the same relate to lands in England or Wales, or the Accountant-General of the Court of Exchequer in Ireland, if the same relate to lands in Ireland, to be placed to the account there of such Accountant-General, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said Courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes—that is to say,

Applica-
tion of
moneys
deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or encumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled Section 69.
to such money.

As to costs under this section, see section 80. Costs.

Where a company had, under pressure, paid the purchase money to the vendors, the latter were ordered to pay it into Court, under this section, for *interim* protection. (*London and North Western Railway Company v. Corporation of Lancaster*, 15 Beav. 22.)

The Court has no power to apportion money Apportionment.
paid into Court under this section between lessee and lessor. (*Ex parte Ward*, 2 D. & S. 4.)

When, in negotiating a purchase, the vendor stipulated for interest on the purchase money at £5 per cent. from the time of the company taking possession of the land, and the company paid the money into Court, where it remained for a year uninvested, and after that period the company objected to payment of interest, they were held liable to interest at £5 per cent. per annum. (*Ex parte Earl of Hardwicke*, 1 D. M. & G. 297.)

Where two funds have been dealt with by different branches of the Court, and it is desired to deal with both funds at the same time, the Court Funds in different branches of Court.
will give leave to present one petition in both matters in one branch of the Court, without transferring either. (*In re Lord Arden's Estates*, L. R. 10 Ch. 445.)

Where the person presenting a petition for in- Revivor.
vestment in real estate of money, under this section, died before it had been worked out in Chambers, it was, on the application of his execu-

Section 69. tors, ordered to be revived. (*In re Youl*, L. R. 16 Eq. 107.)

Burial
ground
closed.
Claims of
trustees,
vicar,
vestry.

By a local Act of 1792, land was directed to be purchased for an additional burial ground of a parish, and it was provided that the land, when purchased, should vest in the vicar and churchwardens of the parish and their successors, for the purpose of a burying ground for the use of the parish for ever. The fees were to be received by the churchwardens, and accounted for to the trustees. In 1816 a body was constituted, called the church trustees, consisting of the vicar, churchwardens, and other parishioners; and by a statute in 1821, the Act of 1792 was repealed, except that the additional burying ground purchased under that Act was to remain vested in the vicar and churchwardens and their successors for the use of the parish. The church trustees were to fix the amount of the burial fees, which were to be received by the churchwardens; and when they amounted to £200, they were to be paid over to the church trustees, who were to apply them to certain defined charitable purposes. Afterwards, by an Order in Council, the additional burying ground was closed for the purpose of burial; but the church trustees continued to receive burial fees for interment in a new cemetery which had been provided. A railway company having taken part of the additional burying ground, the church trustees petitioned the Court, under the Railways Act, that the purchase moneys might be invested to their account and the dividends paid to them. The vicar of the parish claimed the interest of the fund, on the

ground that the trustees of the burial ground were trustees of it only as a burial ground, which trust had ceased, and that the vicar was entitled as owner of all consecrated land within the parish. The vestry and churchwardens, on behalf of the parish, contended, in like manner, that the trusts of the church trustees had ceased, but relied on the proviso of the Act of 1821, that the ground was to remain vested in the vicar and churchwardens for the use of the parish. The incumbent of the parish chapel claimed under Lord Blandford's Act, 19 & 20 Vict. c. 104. It was held that the petitioners' rights were not extinguished, but only suspended, and that they were entitled to the order as prayed. (*In re St. Pancras Burial Ground*, L. R. 2 Eq. 173.) Section 69.

This section authorises enfranchisement of copyholds settled on the same trusts (*In re Cheshunt College*, 3 W. R. 638; *Dixon v. Jackson*, 4 W. R. 450). A leasehold interest is an encumbrance under this section (*Ex parte Corporation of Sheffield*, 21 Beav. 162; *Ex parte Burgesses, &c., of Sheffield*, 3 W. R. 146). All lands of a municipal corporation are held upon the same or like uses, trusts, or purposes, so that money paid for the taking of one part may be applied to the redemption of an encumbrance upon another part (*Ex parte Corporation of Cambridge*, 6 Hare, 30); and in an application under this section the freemen must be represented. (*Ex parte Mayor of Lincoln*, 6 Rail. Cas. 738.) Enfranchisement.

And money paid in for the purchase of lands belonging to a corporation has been applied in Mortgage of tolls, bonds.

Section 69. the payment off of mortgages of certain tolls, and of bonds which had been given by the corporation for moneys borrowed under the provisions of the 9 & 10 Vict. c. 74, s. 21, and were payable out of the borough fund, which fund largely consisted of the rents and profits of the real estates of the corporation. (*In re Derby Municipal Estates*, L. R. 3 C. D. 289.)

Costs where purchase completed previously to reference. A purchase completed previously to a reference to the Master does not come under the Act, so as to entitle to costs. (*Ex parte Bouverie*, 5 Rail. Cas. 431.)

Persons absolutely entitled. Though absolutely entitled to the fund, person are entitled to have it reinvested in land at the cost of the company. (*Re Dodd's Estate*, 19 W. R. 741.)

Leaseholds. Money paid in for the purchase of a chapel, which was freehold, and had been vested in trustees who had an absolute legal title, was allowed to be reinvested in the purchase of a leasehold chapel. (*In re Rehoboth Chapel*, L. R. 19 Eq. 180.)

Copyholds of inheritance. Under special circumstances a reinvestment in copyholds of inheritance will be allowed (*Re Browne*, 6 Rail. Cas. 733), and also where the money is for the taking of leaseholds.

Isle of Man. Money may be reinvested in land in the Isle of Man. (*In re Taylor's Estate*, 40 L. J. Ch. 454.)

Equity of redemption. The Court will not allow a reinvestment in an equity of redemption. (*In re Portadown, Dunganon, and Omagh Junction Railway Company*, L. R. 10 Eq. 368; *Ex parte Craven*, 17 L. J. Ch. 215.)

Nor in leaseholds *simpliciter*. (*Ex parte Macaulay*, 2 W. R. 667.) Section 69.

Where the money is paid in in respect of lands taken from a charity, a petition under this section for reinvestment in land can be entertained without the certificate of the Charity Commissioners (*In re Cheshunt College*, 3 W. R. 638), but must be intituled, in the Act 52 Geo. III. c. 101, must have the fiat of the Attorney-General, and be signed by two individual petitioners, and not by a corporation and an individual. (*In re London, Brighton, and South Coast Railway Company*, 18 Beav. 608.) Leaseholds.
Charity lands.

Where a sum of £250 had been deposited in the Bank by a company under section 85, and the purchase money was subsequently fixed by arbitration at £300, the Accountant-General declined to receive less, and a petition was presented by the trustees, and consented to by the company, for payment into Court of the £50 to the same account as the £250, and the investment of the whole and payment of the dividends to the tenant for life. (*Ex parte London, Tilbury, and Southend Railway Company*, 1 W. R. 533.) Payment in of further sum awarded.

Where the sum sought to be reinvested in land was only £50, the Court, while refusing to dispense with the usual order of reference as to title, gave leave to the parties to apply in chambers that the investigation of the title might be dispensed with. (*In re Bloomfield*, 25 W. R. 27.) Reference as to title, sum under £50.

On a petition for confirmation of the Master's report, approving of a proposed reinvestment in land, it is not necessary that the persons entitled Petition for confirmation service.

Section 69. in remainder should be before the Court. (*Re Browne*, 6 Rail. Cas. 733.)

Appearance of remaindermen.

Under a petition presented by the tenant for life for the reinvestment in land of the compensation money paid for lands taken by a railway company, the remaindermen and trustees, if they approve, ought to join in the petition or abstain from appearing at the hearing.

Costs of remaindermen.

Costs of remaindermen and trustees who appeared as respondents upon a petition, presented under this Act and a suit, for reinvestment in land were disallowed. (*Wilson v. Foster*, 26 Beav. 398.)

Surveyors for several companies. Costs.

On a petition for reinvestment in land of money paid in by several companies, the companies pay the surveyors' fee rateably according to the amount invested paid in by them (*Ex parte Corporation of London*, L. R. 5 Eq. 418.)

Lunatic. Reinvestment in guaranteed railway stock.

The purchase money of land taken belonging to a lunatic has been ordered to be reinvested in guaranteed railway stock, the name of the public body being omitted from the title of the account, and the reinvestment taken as being equivalent to a reinvestment in land. (*In re Buckingham*, L. R. 2 C. D. 690.)

Order for investment.

Where land belonging to a lunatic has been purchased, the money may be ordered to be paid to the credit of the lunacy, and invested to the joint account of the lunatic and the company without being first paid into Court under this section, but the application for such an order must be made in the Chancery Division as well as in Lunacy. (*In re Milnes*, L. R. 1 C. D. 28.)

This section effects what is called a constructive Section 69. reconversion as regards purchase money arising Reconversion. from land taken by a railway company and belonging to an infant, and which could not be conveyed except under the provisions of the Act. The question depends entirely upon the construction of the section, and one must therefore consider first to what it applies. It applies to purchase money or compensation in respect of lands taken from, first, a corporation, which not being beneficially entitled has no power of sale, or which being under some statutory disability cannot sell; then a tenant for life or in tail, that is, a tenant in tail incapable of selling, as, for instance, where estates are settled and made inalienable by Act of Parliament, and a tenant in tail who is prevented by law from selling, as, for instance, a tenant in special tail, after possibility of issue extinct who for all purposes of alienation is considered merely as a tenant for life; then again a married woman seised in her own right, or entitled to dower, who cannot sell except with the concurrence of her husband, they being together owners in fee; then a guardian or committee, neither of whom can sell for himself; then a trustee, executor, or administrator who may have the entire fee simple, like a corporation, and yet may not be able to sell. Thus the great majority of the persons here described are persons taking under no settlement, and having no settled estate at all in the real sense of the term. Then the section goes on to direct that the money shall be deposited in the Bank, and shall remain so deposited until the same be applied to some one or more of

Section 69. the following purposes (that is to say) : In the purchase or redemption of the land tax, or the discharge of any debt or encumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same, or the like uses, trusts, or purposes. The word "settled" does not mean "in settlement" in the usual sense of the term, but it means simply standing limited. It must mean that or it would not in general apply to the case of a corporation, or of a married woman seised in her own right, or of a trustee, guardian, or committee, or in fact to half the cases mentioned in the previous part of the section. Then the section goes, "or in the purchase of other lands to be conveyed, limited, and settled in the same manner as the lands in respect of which such money shall have been paid stood settled," meaning "stood limited," for the same reason that otherwise it would exclude half the cases previously mentioned. Then the section says the money may also be applied in removing or replacing buildings, thus further showing an intention of placing the persons from whom the lands have been taken as nearly as possible in the same position as they were before, or in payment to any party becoming absolutely entitled to such money. That obviously means entitled to his or her own use, as, for instance, where an infant attains twenty-one, or a married woman becomes discoverd; that is to say, reading this section with the 7th section, till the person becomes entitled to the money to his or her own use, there is a constructive reconversion which he

or she on becoming so entitled can always stop, Section 69. but until that event happens the money is to be laid out in lands or buildings to stand limited to the same uses as the lands sold stood limited, and therefore must be considered as land, consequently land of which an infant is absolutely seised in fee remains impressed with the character of real estate, and on the death of the infant descends to his heir at law. (*Kelland v. Fulford*, 6 Ch. D. 491.)

Purchase money has been ordered to be applied ^{Lateral additions.} towards the cost of lateral additions to a house which was part of the settled estate (*In re Spicer's Trusts*, L. R. 3 C. D. 262); also in the ^{New buildings.} erection of new buildings on land already settled to the same uses. But not in repairs or permanent improvements nor placing new buildings on the land (*Drake v. Trefusis*, L. R. 10 Ch. 364; *In re Incumbent of Whitfield*, 1 T. & H. 610; *Re Wight*, 6 W. R. 718; *Re Dummer's Will*, 2 D. J. & S. 515; *Ex parte Corporation of Liverpool*, L. R. 1 Ch. 596). Nor in recouping a tenant for life what he has already expended, unless such expenditure was properly a charge on the estate (*Ex parte Davies*, 3 D. & J. 144). But the Court will order the reinvestment of money in rebuilding houses on the estate if it appears to be beneficial to the estate, and the remaindermen do not object (*In re Leigh's Estate*, L. R. 6 Ch. 887; *Re Wigan Glebe Act*, 3 W. R. 41; *In re Clitheroe's Trusts*, 17 W. R. 345). Where the effect of the construction of a line of railway had been to divert business from certain trade buildings on another part of the estate, and to render them useless for

Section 69. trade purposes, also to expose to risk from fire a stackyard and farm buildings, so as to render them uninsurable, it was held that sufficient special circumstances had been shown to enable the Court to lay out part of the compensation money in taking down the trade buildings, and erecting dwelling-houses on their site, and in removing the stackyard, and roofing the farm buildings with slate or tile instead of thatch. (*In re Johnson's Settlements*, L. R. 8 Eq. 348.)

Arable
lands
severed
from farm-
buildings.

Where a railway severed the arable lands from the farm buildings, the money was ordered to be applied in building new buildings. (*Ex parte Melward*, 27 Beav. 571.)

Buildings
previously
erected.

Money has also been allowed to be applied in payment for buildings erected previously to payment into Court but subsequently to the agreement. (*Re Partington's Trust*, 11 W. R. 160.)

Temporary
buildings
for
hospital.

And the procuring and fitting up of houses for the temporary accommodation of patients of an hospital whose original buildings have been taken is a proper reinvestment. (*In re St. Thomas's Hospital*, 11 W. R. 1018.)

Reversion.

Money paid in for the taking of leaseholds will be allowed to be reinvested in the purchase of the reversion of other leaseholds belonging to the same parties. (*In re Brasher's Trust*, 6 W. R. 406.)

Roads and
drains.

The Court will also allow the money to be laid out in making new roads and drains, if satisfied that it is for the permanent benefit of the estate. (*Re Clitheroe's Trusts*, 17 W. R. 345; *Re Vicar of Queen Camel*, 11 W. R. 503.)

Money paid in respect of damage done to some Section 69.
schools has been ordered to be laid out in improv- Schools'
ing those schools. (*Ex parte the Minister and* improve-
Churchwardens of St. John's Church, Fulham,
28 L. T. 173.)

The Court has not jurisdiction to pay the money Tenant for
out to a tenant for life on an undertaking by him life under-
to lay it out in making roads on the property for taking to
the purpose of improving it and increasing the lay out in
value of the inheritance. (*Ex parte Thompson,*
L. R. 5 Eq. 63.) improve-
ments.

Where glebe lands had been taken, and an Rebuilding
arrangement was, with the consent of all proper rectory.
parties, made for the rebuilding of a rectory-house
—part of the money to be advanced by the Com-
missioners of Queen Anne's Bounty and a part
to be supplied by money agreed to be paid by a
railway company for a piece of the glebe—the
rebuilding proceeded, but the railway company
were unable to pay, and the money required was
advanced by the rector, when the railway com-
pany had paid the money, the Court held that it
had no power to allow it to be paid to him, and
questioned whether it had power to sanction
such money being laid out in rebuilding a rectory.
(*Williams v. Aylesbury and Buckingham Railway*
Company, L. R. 9 Ch. 684.)

But in a later case, on the ground of the money Where
not having been spent before the application was money had
made, it was allowed to be laid out in the erection not been
of a new rectory-house (*Ex parte Rector of*
Hartington, 23 W. R. 434); and also in recouping spent.
to the rector past outlay in building a farm-house

Section 69. on the glebe. (*Ex parte Rector of Gamston*, L. R. 1 C. D. 477.)

Repairs to rectory. In another case, however, a portion of the money has been allowed to be laid out in repairs to the rectory buildings, but not in the restoration of the chancel or in paying off a sum of money borrowed from the Governors of Queen Anne's Bounty. (*Ex parte Rector of Grimoldby*, L. R. 2 C. D. 225; see *In re Nether Stoney Vicarage*, L. R. 17 Eq. 156.)

Repairing cottages. Money paid in for the taking of part of glebe lands will be allowed to be laid out in repairing cottages on the glebe. (*Ex parte Rector of Holywell*, 13 W. R. 960.)

Improvements to parsonage. With the consent of the bishop and patron, the money may be laid out in improvements and additions to the parsonage house. (*Ex parte Rector of Claypole*, L. R. 16 Eq. 574; *Ex parte Perpetual Curate of Chelford*, W. N. 1866, 163.)

Farm-buildings. And where shown to be beneficial the money will be ordered to be laid out in the erection of farm buildings. (*Ex parte Rector of Shipton-under-Wychwood*, 19 W. R. 549.)

Inclosure expenses. Under an inclosure Act some lands were allotted to a rector who had a power of selling to pay the expenses. Under a Railway Act compensation was made in respect of other lands of the rectory, and paid into Court. The Court sanctioned the application of the money in Court to the payment of the expenses of the inclosure. (*Ex parte Lockwood*, 14 Beav. 158.)

Dower. A dowress, where money is in Court belonging to an infant subject to her right to dower, is entitled

to have the value of her right of dower as determined by the valuers paid to her out of the fund. Section 69.
(In re Hall's Estate, L. R. 9 Eq. 179.)

Where the fund is claimed on petition by a person who would have been tenant in tail of the land represented by the fund, it is necessary for him to execute a disentailing deed as a condition of having the fund paid out to him. *(In re Broadwood's Settled Estates, W. N. 1875, December 4, p. 224; Ex parte Smyth, L. R. 10 Eq. 66; but see In re Row, L. R. 17 Eq. 300; In re Butler's Will, L. R. 16 Eq. 479.)*

Under "party becoming absolutely entitled," Trustees with power of sale. are included trustees of a settlement or will with power of sale, and the Court in ordering payment out of the money will not inquire what the trusts are *(In re Hobson's Trusts, L. R. 7 C. D. 708)*; and this will be done though the *cestuis que trustent* be infants *(In re Gooch's Estate, L. R. 3 C. D. 742; see In re Reaston's Estates, L. R. 13 Eq. 564)*; but where the trust was for sale after the death of a person in whose lifetime a petition was presented for payment out to the trustees, the order was refused *(In re Horwood's Estate, 3 Giff. 218)*; although, in a subsequent case, where there seems to have been no power of sale, but where the petitioners were trustees under an appointment by will in favour of one of themselves for life, the money was ordered to be paid out to them. *(Re Illman's Will, 18 W. R. 862.)*

In another case, the trust was for sale as soon as the youngest of the *cestuis que trustent* attained twenty-one, and division of the proceeds amongst

Section 69. such of them as should be then living, and the issue of such as should be dead. Part of the land was taken and the money paid into Court. On the attainment by the youngest *cestuis que trustent* of the age of twenty-one, the trustees and some of the *cestuis que trust* presented a petition asking that the fund might be paid out to the trustees or, in the alternative, that the shares of those *cestuis que trust*, who were petitioners, might be paid out, leaving the other shares in trust in the matter of the Act, Vice-Chancellor Bacon refused to order payment out to the trustees, but expressed his willingness to make an order according to the other alternative. The petitioners did not object to this, but the company insisted that the order ought to be for payment out of the whole fund to the trustees. It was held by the Court of Appeal that as the petitioners did not object to the order proposed the company could not complain of it. (*In re Sowry*, L. R. 8 Ch. 736.)

Service of
petition.

Where trustees for sale petition for payment out, the petition need not be served upon the *cestuis que trust*. (*In re East*, 2 W. R. 111.)

Trustees of
charity.

The trustees of a charity are "persons absolutely entitled." (*In re Spurtowe's Charity*, L. R. 18 Eq. 279.)

S. 76.

The Court has jurisdiction to order money paid in under section 76 to be reinvested under this section. (*Dixon v. Jackson*, 4 W. R. 450.)

Convey-
ancing
counsel;
practice.

Under section 40 of 15 & 16 Vict. c. 80, on a petition for reinvestment, a reference will be made to the conveyancing counsel, and upon the title being reported by him to be satisfactory, the

order will be made without a second petition being required, affidavits having been filed as to the purchase being an eligible one. (*Re Caddick's Settlement*, 9 Hare, App. IX.) Section 69.

An order will be made prospectively for payment of the money on certificate of the chief clerk that the title has been approved and the conveyance executed. (*Re Hitchin's Estate*, 1 W. R. 505.) Prospective order.

Where the tenant for life has added some of his own money to the purchase money, he will be allowed to charge the property so purchased to that amount by his will. (*Re Jones's Settlement*, 3 N. R. 632.) Money added by tenant for life.

The Court will not sanction a reinvestment in land upon a surveyor's opinion as to value, but requires the facts to be proved, in order that it may form its own conclusions. (*Re Kinsey*, 1 N. R. 303.) Surveyor's opinion.

An order for reinvestment has been made when the money has been paid direct to the tenant in tail, payment into Court being dispensed with. (*Ex parte Earl of Abergavenny*, 4 W. R. 315.) Money paid direct to tenant in tail.

The land purchased may be declared to be subject to the mortgages which affected the land taken by the company. (*Ex parte Peyton's Settlement*, 4 W. R. 380.) Subject to original mortgages.

In a case where lands belonging to a charity had been taken an order was made for the investment of the money, and payment of the interest to the secretary and to his successors, the secretaries for the time being of the trustees of the charity of which there was no treasurer. (*In re Codrington's Charity*, L. R. 18 Eq. 658.) Charity dividends to be paid to secretary.

Order for the Application of the Money. Interim Investment.

Section 70. LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of Three per Centum Consolidated or Three per Centum Reduced Bank Annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Costs. As to costs under this section, see section 80.

Brokerage. An investment may be ordered without declaration, the fee for brokerage being paid by the petitioner, and allowed him in his costs against the company. (*Re Wilson*, 1 W. R. 504.)

India Stock. The Court will allow an investment under this section in India Stock, although that stock is not one of the securities mentioned. (*In re Southwold Railway Company's Bill*, L. R. 1 C. D. 697; *In re Fryer's Settlement*, L. R. 20 Eq. 468, in which the Court declined to follow *Ex parte Great Northern Railway Company*, L. R. 9 Eq. 274.)

Cash under control of Court. The money is cash under the control of the Court within the meaning of the 1st General Order of 1861. (*In re Fox's Trusts*, 23 W. R. 744.)

Mortgage security. An investment on mortgage is not a permanent reinvestment, and accordingly the costs must be paid

Costs.

by the company without any condition as to costs Section 70. of any future permanent investment (*In re Blyth's Trusts*, L. R. 16 Eq. 468; *In re William Smith's Estate*, L. R. 9 Eq. 178, not following *Ex parte Franklyn*, 5 Rail. Cas. 206). But where there has been a prior interim investment in Reduced Annuities, the Court, while sanctioning an investment in real securities, will, with regard to costs, treat the investment as a permanent investment. (*In re Flemon's Trusts*, L. R. 10 Eq. 612; *Re Wilkinson's Estate*, 16 W. R. 537; *Re Lomax*, 34 Beav. 294.)

A dean and chapter are entitled to have the Dean and Chapter. dividends paid to them of money paid in in respect of lands taken from them, and which were subject to beneficial leases, the dean and chapter having power to let the land on building leases and obtain a surrender of the tenants' interests, and this although the valuation purported to have been made on the assumption that the tenants were to continue to pay the entire rent reserved by their leases. (*Re Hampstead Railway Company*, 7 W. R. 81.)

Where charity lands are taken, and the rector Charity lands. for the time being is perpetual trustee, the dividends will be ordered to be paid to him. (*In re Davenant's Charity*, 2 W. R. 344.)

A rector who has enjoyed the right to burial Burial ground. fees from a burial ground, the freehold of which is vested in trustees, is the person entitled under this section to receipt of the rents and profits, and whatever may be the ultimate destination of the fund, the dividends, so long as it remains in

Section 70. Court, are payable to the rector for the time being.

By an Act of Parliament reciting the insufficiency of an existing churchyard, the rector and churchwardens and certain other persons were constituted trustees, and empowered to enlarge the existing churchyard and to buy land for an additional burial ground, to be conveyed to the rector and churchwardens "for the use of the inhabitants of the parish." In 1849 a portion of the land purchased under the Act was taken by a railway company, and the purchase money paid into Court under this Act. The burial ground was subsequently closed for burials. It was held, that inasmuch as the land was intended as an addition to the churchyard, the rights of the rector therein were the same as his rights in the old churchyard as far as they were not affected by the Act under which the land was purchased, and that he was entitled to the dividends on the fund in Court so long as it remained there (*Ex parte The Rector of St. Martin's, Birmingham*, L. R. 11 Eq. 23), and this even though the burial ground had been closed for a long period previously to the taking of the land, and the rector had in consequence ceased to derive any income whatever from it. (*Ex parte Rector of Liverpool*, L. R. 16 Eq. 15.)

Where
closed for
consider-
able
period.

By a local Act of 1792 land was directed to be purchased for an additional burial ground of a parish, and it was provided that the land when purchased was to vest in the vicar and churchwardens of the parish and their successors for the purpose of a burying ground for the use of the

parish for ever. The fees were to be received by Section 70. the churchwardens and accounted for to the trustees. In 1816 a body was constituted called the church trustees, consisting of the vicar, churchwardens, and other parishioners; and by an Act in 1821 the Act of 1792 was repealed, except that the additional burying ground, purchased under that Act, was to remain vested in the vicar and churchwardens and their successors for ever for the use of the parish. The church trustees were to fix the amount of the burial fees, which were to be received by the churchwardens, and when they amounted to £200 were to be paid over to the church trustees, who were to apply them to certain defined charitable purposes. Afterwards, by an Order in Council, the additional burial ground was closed for the purposes of burial, but the church trustees continued to receive burial fees for interment in a new cemetery which had been provided. A railway company having taken part of the additional burial ground, the church trustees petitioned the Court under the Railway Acts that the purchase moneys might be invested to their account and the dividends paid to them. It was held that the Court had no jurisdiction under the Railway Acts to make the order as prayed. Upon a second petition being presented by the Attorney-General for a scheme, it was held upon the two petitions that the Court had jurisdiction, and the petitioners' rights were not extinguished but only suspended, and that they were entitled to the order as prayed. (*In re St. Pancras Burial Ground*, L. R. 3 Eq. 173.)

Section 70. Leaseholds were bequeathed upon trust out of the rents and profits to pay an annuity of £52 for the life of the annuitant, and subject and without prejudice to the annuity were bequeathed upon other trusts, but without any trust for sale. They were purchased by a railway company under the provisions of this Act and the proceeds paid into Court, but the income was insufficient to keep down the annuity. It was held that portions of the corpus ought to be sold from time to time to satisfy the growing payments. (*Re Ann Wilkinson*, 3 De Gex & S. 633.)

Practice order for payment of dividends. An order had been obtained on petition for payment to a tenant for life of dividends of a sum of stock representing purchase money paid into Court under this Act by a company which had taken land in settlement. The tenant for life died, and the guardian of an infant tenant in tail entered into receipt of the rents and profits. At the death of the tenant for life two dividends and a proportionate part of a third had not been received by him. It was held that the order for the payment to executors of the tenant for life of the dividends and apportioned part of the dividend might have been obtained by summons, but that the order for the payment of the other apportioned part of the dividend, and for future payment of dividends to the guardian of the infant tenant in tail, could properly be made only on petition, of which the company must pay the costs. (*In re Jolliffe's Estate*, L. R. 9 Eq. 322.)

Subsequent order for payment of dividends to tenant in tail.

Remainderman's appearance. Where purchase money has been paid in under this Act in respect of lands let on lease at rack rent

and settled to the use of a tenant for life with remainder over, it is proper to make the remainderman a respondent to a petition by the tenant for life for investment and payment of dividends, although the interest of the proposed investment of the money will be less than the rent reserved by the lease. (*In re Crane's Estate*, L. R. 7 Eq. 322.) Section 70.

By the will of a testator who died in 1838, land was devised to a tenant for life with remainder over in fee. In 1859 the tenant for life and remainderman concurred in demising part of the property for twenty-one years, at what was then a rack rent of £84. In 1868 the demised property was taken by the Metropolitan Board of Works, and the purchase money (which when invested would yield £200 a year) was paid into Court under the provisions of this Act. It was held that the tenant for life was entitled only to £84 a year during the residue of the term, and that the surplus income during that time must be accumulated. (*In re Mette's Estate*, L. R. 7 Eq. 72.) Beneficial lease.

Petitions under this section need not be served upon encumbrancers. (*In re Sir John Morris's Settled Estates*, 23 W. R. 851.) Encumbrancer's service.

Where compensation money was paid into Court by a railway company on an agreement with a tenant for life for purchase of the fee-simple, but on investigating the title part of the land was found to be copyhold with a defective title as to one undivided moiety, the Court ordered an apportionment of the money so as to carry over the amount representing the price of that part of the land to which a good title was made, and the Title to only part of land.

Section 70. dividends to be paid to the tenant for life, but the capital not to be paid out without notice to the company. (*In the Matter of Perk's Estate*, 1 S. & G. 545.)

Service of petition. The petition of a tenant for life under this Act for reinvestment in the purchase of land of the proceeds of settled property taken by a railway company, need not be served upon any person entitled in remainder. (*Ex parte Staples*, 1 D. M. & G. 294.)

Leaseholds. Tenant for life. Leaseholds bequeathed to one for life with remainder over were taken by a railway company, and the purchase money was invested in Consols. The tenant for life only received the dividends. It was held on her death (her representative assenting to take it) that her estate was entitled out of the Consols to the difference between the dividends received and the aggregate amount of the rental which would have accrued during her life if the premises had not been taken. (*Jeffreys v. Conner*, 28 Beav. 328.)

Sums under £200 and above £20.

Section 71. LXXI. If such purchase money or compensation shall not amount to the sum of £200, and shall exceed the sum of £20, the same shall either be paid into the Bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding £200, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled;

and in case of the coverture, infancy, lunacy, or other Section 71. incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the Bank, but it shall not be necessary to obtain any order of the Court for that purpose.

Where the fund in Court was being reduced by ^{Under £70.} a reinvestment in land to less than £70, the residue was ordered to be paid to trustees nominated under this section. (*Re Kinsey*, 1 N. R. 303.)

Sums under £20.

LXXII. If such money shall not exceed the sum of £20, Section 72. the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable for their own use and benefit, or in case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

Money payable to Party not absolutely entitled in respect of Accommodation Works, Withdrawal of Opposition to Bill, &c., to be paid into the Bank. Power to Court to allow a Sum to Tenant for Life for Inconvenience.

LXXIII. All sums of money exceeding £20, which may Section 73. be payable by the promoters of the undertaking in respect

Section 73. of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the Bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorising the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Tenant in
tail.

For payment out to tenant in tail, see section 69, p. 165.

Applica-
tion of
section.

This section applies as between the tenant for life and the reversioner, and does not touch the contract as between the company and the tenant for life. (*Taylor v. Directors, &c., of the Chichester and Midhurst Railway Company*, L. R. 4 H. L. 628.)

Considera-
tion for not

The money received for not opposing a bill must

be paid into Court whether any lands of that ^{Section 73.} person were taken or not. The words "contract-^{opposing}ing party" not being restricted to persons whose ^{bill.} land is taken. (*Pole v. Pole*, 2 Dr. & Sm. 420, 6 N. R. 19.)

A tenant for life will be allowed out of the fund ^{Costs of} his costs incurred after the passing of the Act, but ^{opposing} not those of opposing the bill. (*In re Earl of Berkeley's Will*, L. R. 10 Ch. 56; *In re Strathmore Estates*, L. R. 18 Eq. 338.)

But a board of conservators were allowed out of ^{Public} their fund the costs of watching or opposing a bill ^{body.} for a scheme, which, if carried out, would injuriously affect the banks of the river under their superintendence. (*Bright v. North*, 2 Ph. 216.)

A tenant for life, *bond fide*, and under advice, ^{Costs of ar-} having refused the company's offer, and being ^{bitration.} awarded a less amount, will receive out of the fund his costs of the arbitration. (*Re Aubrey's Estate*, 17 Jur. 874.)

Under an inclosure Act some lands were allotted ^{Power of} to a rector, who had a power of selling to pay the ^{sale to pay} expenses. Under a Railway Act compensation was made in respect of other lands of the rectory and paid into Court. The Court sanctioned the application of the money in Court to the payment of the expenses of the inclosure. (*Ex parte Lockwood*, 14 Beav. 158.)

Part of the purchase money was ordered to be ^{Money} paid to the tenant for life in respect of incon- ^{paid to}venience sustained by him. (*Re Collis*, 14 L. J. ^{tenant for} ^{life for} ^{inconve-} ^{nience.} N. S. 352.)

*Application of Money paid in for Purchase of
Leases and Reversions.*

Section 74. LXXIV. Where any purchase money or compensation paid into the Bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Tenant for life and remainderman. By the will of a testator, who died in 1838, land was devised to a tenant for life, with remainder over in fee. In 1859 the tenant for life and remainderman concurred in demising part of the property for twenty-one years, at what was then a rack rent of £84. In 1868 the demised property was taken by the Metropolitan Board of Works, and the purchase money (which when invested would yield £200 a year) was paid into Court under the provisions of this Act. It was held that the tenant for life was entitled only to £84 a year during the residue of the term, and that the surplus income during that time must be accumulated. (*In re Mette's Estate*, L. R. 7 Eq 72)

Sum insufficient when in-. The income of the investment of purchase money of leaseholds taken under this Act being insufficient

to give a tenant for life of the lease the same benefit as she would have had if the lease had continued in existence, the Court directed a Government annuity equal to the net income from the leaseholds to be purchased, or if the fund were insufficient for that purpose, then that the dividends should be paid to the tenant for life, and the principal half-yearly divided by the number of years unexpired of the term, and half of the quotient part of the stock sold, and the amount paid to the tenant for life during her life in addition to the dividends. (*In re Pfleger*, L. R. 6 Eq. 426.)

Section 74.
vested to
pay
annuity
of same
amount as
rent.

Where leaseholds settled upon one for life, with remainders over, had been purchased under this Act, the Court upon making an order to invest the purchase money directed a reference to an actuary to ascertain how much of the capital ought to be paid in each year to the tenant for life. (*In re Phillip's Trusts*, L. R. 6 Eq. 250.)

Lease-
holds.

Where purchase money has been paid in under this Act, in respect of lands let on lease at rack rent, and settled to the use of a tenant for life, with remainder over, it is proper to make the remainderman a respondent to a petition by the tenant for life for investment and payment of dividends, although the interest of the proposed investment of the money will be less than the rent reserved by the lease. (*In re Crane's Estate*, 7 Eq. 322.)

Remain-
derman.

A testator died in 1862, having bequeathed the residue of a term of years of which he was possessed under lease in a house where he and his two sons carried on business, to his executors upon trust, to

Lease
under will
at low rent,
principle of
estimation
of value.

Section 74. permit and suffer his sons "to hold, use, occupy and enjoy" the leasehold premises "so long as they may carry on the business together therein, as now carried on by me and them in partnership together," they paying a low rent to the executors, and the executors paying the rent reserved by the lease. He further declared that if his sons or one of them should at any time "decline" to carry on the business on the premises, his executors were to sell the same with power to lease until sale. By an order of the Court the leasehold premises were directed to be sold whenever the sons or the survivor should "decline or cease to carry on business" on the premises. On the 8th of May, 1866, the Metropolitan Board of Works gave notice to treat for the premises, and by an order made on a petition presented by the executor, he was ordered to submit his claim to a jury, which he did, and obtained a verdict for £8,222, which was stated to have been given on the footing of his being entitled to the whole residue of the term subsequent to the 8th of May, 1866. The sons submitted their claim to arbitration, and had been awarded £4,070. The Board of Works objecting to pay both sums, it was held that the valuation of the executor's interest ought to be made as of the interest which at the moment when the premises were taken he would have had if they had not been taken. Hence, that in order to arrive at such value, a deduction must be made from the whole value of the premises in respect of the contingency that the executor might have been compelled by the continuance of the sons' occupation to take a

depreciated rent. It was held, further, that the balance after such deduction must be estimated by a jury summoned in the usual way under the Act. It was held, also, that the sons were entitled to a sum equal to the present value of the improved rent of the premises beyond the rent and outgoings payable by them for the residue of the term during their lives and the life of the survivor, subject to a deduction in respect of the possibility that they would have discontinued to carry on business. (*Penny v. Penny*, L. R. 5 Eq. 227.)

Section 74.

There is no power of apportionment under this section between lessee and lessor. (*Re Ward*, 5 Rail. Cas. 398.)

Where lands subject to a settlement made before the Apportionment Act (4 & 5 Will. 4, c. 22) are taken by a company under this Act, and the dividends ordered to be paid to the tenant in possession, the Apportionment Act does not apply to the dividends, whatever may have been the nature and date of the leases under which the lands were held by the tenants. (*In re Sawton's Estates*, L. R. 3 Eq. 469.)

Apportionment Act, 4 & 5 Will. IV. c. 22. Lands under lease taken.

The lessors are entitled to receive out of the purchase money a sum equal to the amount of any fine to which, had the property not been taken, they would have been entitled (*Ex parte Precentor of St. Paul's Cathedral*, 1 K. & J. 538). But where, though notice to treat having been received, the lease has not been renewed, and the company giving the notice has afterwards proved abortive, upon the same lands being taken by a second company the lessors are not entitled to

Ecclesiastical lease. Amount of fine.

Company abortive.

Section 74. payment out of the purchase money of the amount of such fine.

Marriage of executrix.

The purchase money of a leasehold interest purchased by a railway company was paid into Court to an account "*Ex parte* the company" the account of the two lessees, and the dividends were ordered to be paid to one lessee and the executrix of the other. The executrix married. It was held that, on a petition for payment of the dividends to the husband and the other lessee, it was unnecessary to serve the company, and that the petitioners having served them, must pay their costs. (*Ex parte Hordern*, 2 De G. & S. 263.)

Tenant for life. Diminution of income.

Where leaseholds under a dean and chapter, renewable by custom, had been taken, and the purchase money, when invested in £3 per cent. stock, gave a diminished income to a tenant for life, he was not entitled to be recouped the deficiency of income out of the corpus. (*In re Wood's Estate*, L. R. 10 Eq. 572.)

Archbishop for time being.

Dividends of investments of money paid in in respect of lands belonging to an archbishop were ordered to be paid to the archbishop for the time being. (*Ex parte Archbishop of Canterbury*, 2 De G. & S. 365.)

Reversion dependent on lease for lives vested in church trustees.

The dividends of a sum paid into Court in respect of a reversion of lands, subject to a lease for ninety-nine years, dependent on a life aged seventy-seven, and vested in trustees in trust for the maintenance and repair of a church, were ordered to be paid to the trustees without any accumulation being ordered. (*Ex parte The Trustees of St. Thomas's Church Lands, Bristol*, W. N. 1870, 192.)

A railway company took land subject to a building lease which had been granted, in consideration of an outlay in building, at less than rack rent, and of which eleven years were unexpired, and paid the compensation money for the reversion, subject to such lease, into Court, under this Act. It was held upon petition by the tenant for life of the land for payment of the dividends of the fund in Court to her, that so much of the dividends should be paid to the tenant for life as would compensate her for loss of rent sustained by the company having taken the land, and that the remainder of the dividends should be accumulated till the end of the lease, so that there might then be in Court a sum representing the value of the whole fee. (*In re Wootton's Estate*, L. R. 1 Eq. 589.)

Section 74.

Building
lease.

Deed Poll in Default of Conveyance or satisfactory Title.

LXXV. Upon deposit in the Bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if

Section 75.

Section 75. they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Lien for
costs.

The vendor has no lien for costs upon the land conveyed under this section. (*Earl Ferrers v. Stafford and Uttoxeter Railway Company*, L. R. 13 Eq. 524.)

Right to
abstract of
title.

Where a company have given no notice to treat, nor entered into any agreement with the landowner, but have throughout acted upon their compulsory powers, the relation of vendor and purchaser is not constituted, and they cannot require an abstract of title. (*Martin v. London, Chatham, and Dover*

Railway Company, L. R. 1 Eq. 145, 17 L. T. Section 75.
N. S. 487.)

A company may act under this section where the occupier of the land has a possessory title of only 19½ years, and the person entitled to the fee simple makes no claim, paying the money into Court to the account of "the party interested in the lands."
(*Ex parte Winder*, L. R. 1 C. D. 696.)

Where the landowner is under a covenant not to build he is not liable in an action on the covenant for buildings erected by a company to whom he has conveyed the land under this Act. (*Baily v. De Crespigny*, 10 B. & S. 1.)

Deposit of Money in the Bank in Default of Conveyance or satisfactory Title, or if Owner refuse Purchase Money, or be absent.

LXXXVI. If the owner of any such land purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the name and with the privity of the Accountant-General of the Court of

Section 76. Chancery in *England* or the Court of Exchequer in *Ireland*, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said Court.

Owner,
who is.

By the term "owner" is meant a person having *some* title, and the provisions of this section have in view the possibility of the land being subject to dower or jointure, or some other independent interest or estate outstanding in a third party, who is under no legal or equitable obligation to concur in the sale, but which does not displace the owner's title.

Surviving
partner.

A surviving partner selling partnership lands in discharge of his duty as survivor to wind up the partnership, is an owner within the meaning of this section; and by virtue of this and the 77th section the promoters of the undertaking depositing the purchase money in the Bank to the credit of the vendor and of the representative of his deceased partner, would acquire all the estate and interest of both.

Person in
possession
with bad
title.

A person in possession but showing a bad title is not the "owner" within the meaning of this section, and where the lands are in such possession and the true owner cannot be found, the promoters must have recourse to the jury clauses of this Act. (*Douglass v. London and North Western Railway Company*, 3 K. & J. 173.)

Payment
out.

For payment out of the moneys paid in under this section, see section 78.

Title by
possession.

A railway company agreed to purchase for £600

the fee simple of lands, of which W. was the true Section 76. owner, from H., who was in possession of them. Afterwards finding that H. had only a possessory title of nineteen and a half years they paid the £600 into Court to the account of "the party interested" therein, took possession, and executed a deed poll under the 77th section of this Act, reciting their desire that the land should vest in them for all the estate of H., and purporting to vest in themselves the fee simple of the lands. No claim was made on behalf of W., either to the land or the purchase money, until, after the expiration of twenty years from the time when H. had taken possession, upon petition by persons claiming under H. for payment out to them of the £600 in Court. It was held as against the representative of W. that the petitioners were entitled to the £600, as being the money which the company had to pay for the purchase of H.'s interest in the lands. (*In re Winder*, L. R. 6 C. D. 696.)

A jury or arbitrator acting under this Act simply, can only assess the value of the interest claimed, and not the right to that interest, and if the money value so assessed is paid into Court under this section, the Court is bound to decide the question of right, and if it turns out that the claimant has not the interest he claimed, but some different interest, the Court will apply its own ordinary machinery to ascertain the value of the actual interest, and after paying the amount of such value to the claimant, will return the remainder of the money to the company paying it into Court. (*Brandon v. Brandon*, 2 Dr. & Sm. 305; *Ex parte Cooper*, 5 N. R. 233.)

Power of
Court to
ascertain
interest.

Section 76. The Court will, if the money paid in represents the value of an interest greater than that to which the claimant is entitled, ascertain the value of the interest, and order the rest of the money to be paid out to the company. (*Ex parte Cooper*, 5 N. R. 233.)

Where
value of
interest
less the
residue of
the money
paid out to
company.

**Manda-
mus.** The provisions of the Common Law Procedure Act, 1854, as to *mandamus* apply to claims arising under this section, and the landowner may in an action to recover the compensation assessed, claim a *mandamus* commanding the company to pay the amount into the Bank under this section. (*Barnett v. Metropolitan Railway Company*, 16 W. R. 793.)

Where less
title than
contracted
for. Where a company takes possession under a contract for sixty years, and the landowner shows a title for forty-five years only, the company cannot be compelled to deposit the purchase money in the Bank under this section. (*Douglass v. London and North Western Railway Company*, 3 K. & J. 173.)

**Tender of
costs.** This section says that if the owner on tender of the purchase money refuse to accept the same, it shall be lawful for the company to pay the same into the Bank. This section does not require a tender of costs as well as of the purchase money. Several sections give similar directions as to the recovery of costs. The Legislature intended to give the power of taking possession promptly, and it cannot be supposed therefore that the company must wait until the vendor's costs are taxed. (*Re Turner's Estate*, 10 W. R. 128.)

Interest. Where a sum assessed by a jury has been paid into Court, and a deed poll executed under this

section, the Court has no jurisdiction to make any order as to interest on the money. (*In re Divers*, 1 Jur. N. S. 995.) Section 76.

The owner of certain land required by a railway company, on being served with the usual notice, stated his desire to have the amount to be paid to him for compensation and damages settled by arbitration under the provisions of this Act. Arbitrators were accordingly appointed by the landowner and the company, and the arbitrators not being able to agree upon an umpire, an umpire was ultimately appointed by the Commissioners of Railways. In the meantime the company having paid into the Bank the amount claimed by the landowner, and having given the bond required in such cases by the Act, entered upon the lands, the arbitrators not having made their award in time, the questions of compensation and damage came before the umpire, who made his award, giving him a much less sum than that claimed by him from the company. The landowner having refused to deliver an abstract of title or to take any steps for conveying the land, the company proceeded under the provisions of this section, and paid into the Bank the sum awarded by the umpire. They then presented a petition for payment out to them of the sum paid in by them before taking possession of the land. The landowner in the meantime had taken proceedings at law to set aside the award on various grounds but without success, and was at the time when the petition was presented prosecuting an action against the company to recover the amount originally claimed by him. Under

Where
moneypaid
in exceeds
amount
ultimately
awarded.

Section 76. these circumstances the landowner opposed the petition of the company, but the Lord Chancellor made the order prayed, holding that the landowner was not entitled to avail himself of the security provided by the Act in the deposit of the money, and at the same time to repudiate the proceeding, the benefit of the result of which it was the object of this Act thus to secure to him. (*In re Fooks*, 2 M. & G. 357.)

Receipt to be given, and Lands to vest, on Deed Poll being executed, in the Company as against such Persons.

Section 77. LXXVII. Upon any such deposit of money as last aforesaid being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation, under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation

shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands. Section 77.

A person who had contracted to give sixty years title, but could only prove a possessory title for some thirty or forty years, filed a bill for specific performance of the contract (which he could not have, because his contract was to give sixty years title), or in default to compel the railway company to pay in the money under the 76th section ; but it was considered that he could not have that, and the Vice-Chancellor seems to have thought that all that the company would get by paying in under that section and executing a deed poll, would be the interest of the person with whom they contracted, and nothing more. (*Douglass v. London and North Western Railway Company*, 3 K. & J. 178—182; *Re Winder*, L. R. 6 C. D. 702.) Less title than stipulated.

And where the company having agreed with the occupier for the purchase of the fee simple, and finding that he had only a possessory title of nineteen and a half years, executed a deed poll and paid the money into Court, the effect of the deed poll was held to be to vest in them merely the interest of the person with whom they contracted. (*Ex parte Winder*, L. R. 6 C. D. 696.) Possessory title.

Investment and Application of such Money.

Section 78. LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in *England* or the Court of Exchequer in *Ireland*, may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such Court shall seem fit.

Transfer
to com-
pany of
mortgage.

A company having paid money into Court, and then taken an assignment of a mortgage on the land, may have the purchase money paid out to them as mortgagees under this section. (*Re Marriage*, 9 W. R. 777, 843.)

Lease-
holds on
repairing
lease.

The whole dividends of a sum of money paid in respect of a leasehold inn let on a repairing lease, and which were larger in amount than the rent received from the inn, were allowed to be paid to the tenant for life. (*In re Steward's Estate*, 1 W. R. 489.)

The Court will, if the money paid in represents the value of any interest greater than that to which the claimant is entitled, ascertain the value of the interest, and order the rest of the money to be paid to the company. (*Ex parte Cooper*, 2 Dr. & Sm. 312; *Re Hayne*, 13 W. R. 492.)

As to costs under this section, see section 80. Section 78.

In the case of petitions under Acts of Parliament authorising the sale of property for public purposes where the purchase money is directed by any such Acts of Parliament to be paid into Court, the petitioners claiming to be entitled to the moneys so paid in, must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum in the petition mentioned, or to any part thereof; or if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same. (*Re Edward Sixth's Almshouses*, 16 W. R. 841.)

Costs.

Affidavit
in support.

An affidavit of a trustee of the estate will be sufficient. (*In re Batty's Trusts*, W. N. 1877, 212; *In re Halsey's Estate*, W. N. 1870, 68.)

Trustee.

On a petition for investment presented by trustees of a charity, an affidavit by their clerk that he was not aware of any right or claim by any other person, was held to be a sufficient compliance with Rule 3 of Consolidated Order XXXIV. (*Re Edward Sixth's Almshouses*, 16 W. R. 841.)

Charity
trustees.

A remainderman may not apply under this section for investment and transfer of the fund to the credit of the cause, and deprive the tenant for life of his right to have the fund reinvested in land at the cost of the company.

By remain-
derman.

On an unopposed petition under this section for payment out, proof of the signatures of the attesting witnesses to a deed affecting the petitioner's title was held to be sufficient evidence

Proof of
deed.

Section 78. of the execution of the deed. (*Re Meir's Estate*, 28 L. T. N. S. 760.)

Interest
created
after
agreement.

No person can claim compensation under this Act for an interest in the property created after notice to treat, and therefore any such person making a claim under this section will not succeed, and his petition will be dismissed. (*Ex parte Edwards*, L. R. 12 Eq. 389.)

Trustees
for sale,
cestuis que
trust under
disability.

'Trustees for sale whose *cestuis que trust* are under disability are not persons absolutely entitled for the purposes of this section, and consequently the Court will order the funds to be carried to the separate accounts of the infants, and direct the payment of the dividends to the trustees, liberty being given, however, to apply in chambers for payment of the capital upon it becoming payable. (*In re Reaston's Estate*, L. R. 13 Eq. 564 ; *In re Horwood's (or Sharwood's) Estate*, 3 Giff. 218.)

Where lands having been taken by a railway company, the value awarded, abstract furnished, and no objections raised, the company took possession, but did not pay the money until a bill had been filed by the vendors, who obtained a decree ordering payment on a certain day of the sum awarded, interest from the date of taking possession and costs. Immediately before the day on which payment was to be made, the company, alleging that the abstract showed a title to a moiety only of the lands, gave notice of their intention to pay the money into Court, and they did pay into Court the sum awarded, to an account entitled "*Ex parte* the company. The account of the vendors." They afterwards paid to the vendors a sum (alleged to be

insufficient), as for interest. It was held that the ^{Section 78.} Court had jurisdiction under this section to order the money to be paid to the vendors. (*Gallier v. Metropolitan Railway Company*, L. R. 11 Eq. 410.)

On petition for payment out of money paid in, ^{Apportionment.} in pursuance of an award, the petitioners subsequently to the arbitration having discovered that they were not entitled to a portion of the land, an apportionment was ordered under this section, the petitioners paying the costs of such apportionment. ^{Costs.} (*Re Alston's Estate*, 5 W. R. 189.)

Where two annuitants had not been parties to ^{Annuity-tants.} the agreement for sale and the money had been paid into Court and invested, the dividends were ordered to be paid to the tenant for life, the order being prefaced with an undertaking by the annuitants not to distrain upon the land. (*In re Pedley's Estate*, 1 Jur. N. S. 654.)

The dividends of a sum paid in in respect of ^{Payment of dividends to trustees.} land vested in trustees for a married woman as tenant for life have been ordered to be paid "to the trustees for the time being of the will, or one of them." (*In re Foy's Trusts*, W. N. 1875, 150.)

Until Contrary shown, Party in Possession to be deemed the Owner.

LXXIX. If any question arise respecting the title to the ^{Section 79.} lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto

Section 79. at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the Court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

To what
the section
applies.

This section applies only to the jurisdiction of a Court of Equity in ordering money to be paid out, and not to that of a Court of Law in determining the rights of parties in an issue. (*Ex parte Freeman and Stallingers, of Sunderland*, 1 Dr. 184.)

Proof of
title.

It seems that money will be paid out to the person in undisputed possession without his being compelled to prove his title adversely, and under such circumstances a petition for payment out or for investment need not be served upon any other person than the company (*Re Sterrig's Estate*, 3 W. R. 561), the reason being that a person who, for public purposes, is obliged by Act of Parliament to dispose of some little corner of his estate, which may be a very large and valuable one, is not to have his whole estate and title brought into jeopardy. The Legislature has anxiously provided that the Court shall not, upon occasions of applications for payment of purchase money, deal with the property in any way whatever which can affect the title, unless it be shown so clearly as to be beyond question that there must be litigation on the question of title. (V.-C. Wood, in *In re St. Pan-*

cras Burial Ground, L. R. 3 Eq. 183 ; *In re Perry's* Section 79.
Estate, 1 Jur. N. S. 917.)

By a local Act of 1792 land was directed to be purchased for an additional burial ground of a parish, and it was provided that the land when purchased was to vest in the vicar and churchwardens of the parish and their successors for the purpose of a burying ground for the use of the parish for ever. The fees were to be received by the churchwardens and accounted for to the trustees. In 1816 a body was constituted called the church trustees, consisting of the vicar, churchwardens, and other parishioners, and by a statute in 1821 the Act of 1792 was repealed, except that the additional burying ground purchased under that Act was to remain vested in the vicar and churchwardens and their successors for ever for the use of the parish. The church trustees were to fix the amount of the burial fees, which were to be received by the churchwardens, and when they amounted to £200 were to be paid over to the church trustees, who were to apply them to certain defined charitable purposes. Afterwards, by an Order in Council, the additional burying ground was closed for the purposes of burial, but the church trustees continued to receive burial fees for interments in a new cemetery which had been provided. A railway company having taken part of the additional burial ground, the church trustees petitioned the Court under the Railway Acts that the purchase moneys might be invested to their account and the dividends paid to them. It was held that the Court had no jurisdiction under the

Section 79. Railway Acts to make the order as prayed. Upon a second petition being presented by the Attorney-General for a scheme, it was held upon the two petitions that the Court had jurisdiction, that the petitioners' rights were not extinguished but only suspended, and that they were entitled to the order as prayed. (*In re St. Pancras Burial Ground*, L. R. 3 Eq. 173.)

Mortgages. Upon a petition for payment to the petitioner of the income of a fund arising from the sale of land to a railway company, the petitioner being in possession at the time of the sale as tenant for life, subject to mortgages created by himself, the Court will make an order without requiring the mortgagees to be served with the petition. But it is doubtful whether such service could have been dispensed with in case the tenant for life had been out of possession at the date of the sale. (*In re Hungerford's Estate*, 3 K. & J. 455.)

How far company should take action. It is the duty of the company to state to the Court the difficulties, and to see the whole case brought forward, but not to argue any point in it. (*In re Perry's Estate*, 1 Jur. N. S. 917.)

Possessory title. Where, after the agreement, the occupier of the land was found to have only a possessory title of nineteen and a half years, and consequently the purchase money had been paid into Court to the account "of the party interested," no claim having been made by the true owner until after the expiration of the twenty years, the money was ordered to be paid out to the occupier as being the sum which the company had agreed to pay for his interest in the land. (*Ex parte Winder*, L. R. 6 C. D.

696 ; *Re Jane Evans*, 42 L. J, Ch. 357. See *Ex parte Hollinsworth*, 19 W. R. 580, which seems to have laid down the contrary.)

In a case where lands belonging to a charity had been taken, an order was made for the investment of the money, and payment of the interest to the secretary and to his successors the secretaries for the time being of the trustees of the charity of which there was no treasurer. (*In re Codrington's Charity*, L. R. 18 Eq. 658.)

Charity
dividends
to be paid
to secre-
tary.

Costs in Cases of Money paid into Court.

LXXX. In all cases of moneys deposited in the Bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland* to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking ; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of Court

Section 80.

Section 80. of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants : Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery in *England* or the Court of Exchequer in *Ireland* that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Applica-
tion of
section.

This section applies where there is an inability to convey, or the company are compelling an unwilling owner to part with his land, the parties being unable to do anything by agreement, and the company are sole actors and must pay all expenses.

S. 82.

Section 82, on the other hand, deals simply with the legal expenses of making title and conveying the property, taking these expenses in their largest sense, but not with any costs of ascertaining what that is which is to be put into the document. (*Ex parte Buck*, 1 J. & H. 519.)

Apportion-
ment of
rent.

In a case where a company took compulsory possession of certain parts of land subject to leases, paying money into the Bank, and giving a bond under section 85, the purchase money being afterwards ascertained by arbitration, and the payment of it into Court not becoming necessary, the landowner having incurred considerable costs in relation to the apportionment of the rent, presented a petition asking that they might be paid out of the

deposit by the company. It was held that this Section 80. section applied whenever moneys were deposited in Court under the Act, whether under a previous or under a subsequent section. And an order was made for payment of the costs by the company, but not out of the deposit. (*Ex parte Flower*, L. R. 1 Ch. 599; *Ex parte Morris*, 19 W. R. 943.)

In a similar case in which, however, there had been no money paid into Court, the costs of an apportionment of rents were held not to be payable by the company. (*Ex parte Buck*, 1 J. & H. 519.)

The direction in the 18th section of the 9 & 10 3 & 4 Vict. c. 87, and 9 & 10 Vict. c. 34. Vict. c. 34, to take the provisions of 3 & 4 Vict. c. 87, excludes the use of this Act.

In proceedings under statutes no costs can be awarded except such as are authorised by the particular Act; a proceeding under a statute not being a proceeding in Equity. (*Re Charity Schools of St. Dunstan-in-the-West*, L. R. 12 Eq. 537, overruling *In re Spitalfields School*, L. R. 10 Eq. 671; *In re Cherry's Settled Estates*, 31 L. J. Ch. 351, 4 De G. F. & J. 332; *In re Strachan's Estate*, 9 Hare 185; *Mitchell v. Newell*, 3 Rail. Cas. 515; *Re Laud's Trust*, 4 K. & J. 81.) Costs of proceedings under statutes.

As to the principle upon which this section is extended to other acts, see *Ex parte Vicar of St. Sepulcher*, 33 L. J. Ch. 372. Principle on which this section applies to other Acts.

The Commissioners of Works and Public Buildings were required to pay the costs where they had taken land devised to two tenants in common for life, with remainder to their children in fee, when on the death of one of the tenants for life her Commissioners of Works.

Section 80. children petitioned for payment out. (*Re Edmeade*, 8 W. R. 327.)

This Act incorporated in Amalgamation Acts, but not in earlier Acts.

Where money was paid into Court, and invested under an Act passed previously to this Act, after the passing of which the company is amalgamated with others, the Amalgamation Act incorporating this Act, the costs were held to be governed by the earlier Act (*In re Michell's Trusts*, 3 W. R. 634 ; *In re Doncaster's Settled Estates*, 3 W. R. 635, n. ; *Re Holden's Estate*, 3 W. R. 644) ; but in later cases the costs were held to be governed by this Act, this Act being incorporated in the Amalgamation Acts. (*Re Ellison's Estate*, 3 De G. M. & G. 62 ; *Ex parte Eton College*, 15 Jur. 45.)

Private Act.

Where a company had taken lands, subject to a private Act, under the powers of which alone the purchase could be effected, the costs of a petition by the tenant for life and others for an interim investment of the purchase moneys according to the provisions of the private Act were ordered to be paid by the company. (*In re Shuttleworth's Estate Act*, 8 Tur. N. S. 1090.)

Wilful refusal.

It is not wilful refusal where the petitioner, considering the award to be unsatisfactory, takes proceedings to have it set aside, though ultimately unsuccessful, and refuses to accept the amount awarded when tendered by the company (*Ex parte Bradshaw*, 16 Sim. 174 ; *Ex parte Lawson*, 17 W. R. 186). In another case the petitioner agreed to sell a portion of his land to a railway company, and the company were to pay the costs, charges, and expenses, including the surveyor's charges. The company were desirous of obtaining

immediate possession, and it was agreed that the purchase money should be deposited in the hands of a banker until the conveyance should be executed. This was done, and possession was in consequence given on the 3rd of May, 1848. The company afterwards agreed to grant to the petitioner a lease of the slopes from his land to the railway. In March, 1849, the company was ready to complete the purchase alone, but the petitioner insisted that the two transactions should be settled simultaneously, and this seems to have been acquiesced to. The lease was ready in March, 1850, and an appointment was made for completing. On the 22nd of March, 1850, the railway company tendered the purchase money and interest, and offered to pay the vendor's solicitors' bill, which amounted to £155, under protest, with £65 for the charges of the vendor's surveyor, whose bill amounted to £227. This the vendor's solicitors declined to receive. The company on the next day tendered to the vendor personally the purchase money and interest, which being refused, the amount was three days after paid into Court. This was held not to be wilful refusal. (*In re The Windsor, Staines, and South Western Railway Act*, 12 Beav. 522.)

When the petitioner questions the right of the promoters to take his land, and takes the opinion of counsel, which is adverse to the right, and refuses to accept the purchase money when tendered or execute the conveyance, subsequently however doing both, his conduct does not amount to wilful refusal. (*Ex parte Dashwood*, 5 W. R. 125.)

Section 80.

Question-
ing right of
promoters.

Section 80. In another case the purchase money and compensation payable by a company for taking certain land had been ascertained by arbitration, the title had been approved, and a deed of assignment prepared. Objections were raised on behalf of the company to the amount of costs claimed by the vendor's solicitor. The company proposed to pay the purchase money and to take possession, leaving the amount of costs payable by them to be settled subsequently. The vendor's solicitor on the other hand insisted that the costs should be paid with the purchase money before possession should be taken. The company thereupon tendered the amount of the purchase money to the vendor, who declined to receive it. As possession was withheld, the company paid the purchase money into Court, and called upon the sheriff to put them into possession. On a petition being presented for payment out, it was held that the vendor had no right to insist on having his costs paid before giving possession. The Act (section 76) said that if the owner on tender of the purchase money refused to accept the same, it should be lawful for the company to pay the same into the Bank. That section did not require a tender of costs as well as of the purchase money. Several sections gave similar directions as to the recovery of costs, but the right contended for by the vendor was nowhere given. The Legislature intended to give the power of taking possession promptly, and it could not be supposed, therefore, that the company must wait until the vendor's costs were taxed. There had been wilful refusal to receive the purchase money,

Demand for costs.

and therefore the company would neither pay nor ^{Section 80.} receive costs of that petition, and the vendor must pay the expenses of calling in the sheriff to give possession. (*Re Turner's Estate*, 10 W. R. 128.)

Where it is doubtful under a will whether a ^{Doubts under will as to title.} good title to the premises can be made out, and there is no wilful default or delay on the part of the owner of the premises, the Court being called upon to put a construction upon such a will, the company was ordered to pay the costs of an application for payment out of the money. (*Re Woodburn's Trusts*, 13 L. T. N. S. 237.)

However, the company is entitled upon fulfilling ^{Costs not ordered to be paid out of particular fund.} the conditions of the bond to have the deposit money repaid, and the Court cannot under this section order payment of costs out of it, this section only authorising an order on the company to pay costs, not an order to pay them out of any particular fund. (*In re Neath and Brecon Railway Company*, L. R. 9 Ch. 263; *Ex parte Stevens*, 2 Phill. 772; *Re Wimbledon and Dorking Railway Act*, 9 L. T. N. S. 703; *In re London and Southampton Railway Extension Act*, 16 Sim. 165; *Ex parte Great Northern Railway Company*, 16 Sim. 169.)

Where lands were taken by the Corporation of ^{Costs according to Act.} London under the provisions of the Metropolitan Act, 1860, with which this Act was incorporated, and the purchase money paid into Court on a petition praying that the costs of purchase, &c., including all reasonable charges, &c., relating thereto might be taxed and paid by the corporation, the only order which the Court would make was

Section 80. "costs according to the Act." (*In re Hayward's Estate*, 9 Jur. N. S. 1222.)

Costs not
provided
for by
Order.

On a petition by the Ecclesiastical Commissioners on the resignation of a bishop for the transfer to them of funds in Court, representing the purchase money of lands formerly taken from the see by various companies since amalgamated, some of which lands were taken in 1838, some in 1849, and some subsequently, and upon each occasion an order upon petition had been made for investment of the purchase money, and payment of the dividends to the bishop. Besides costs provided for in those orders further costs were incurred in obtaining payment of each dividend thereunder, and the bishop asked for an order for payment of these costs to him by the company, the company was ordered to pay them, and also the bishop's costs of appearing on the petition. (*Ex parte The Ecclesiastical Commissioners*, 39 L. J. 634.)

Increase
of costs
to com-
pany by
improper
conduct of
petitioner.

After notice to treat for the purchase of houses the owner granted leases for three years to his weekly tenants. The tenants sent in claims which ultimately failed, but the promoters incurred considerable costs in adjudicating upon them. On a petition by the owner for payment out of his compensation which had been paid into Court under section 76, it was held that the Court could not authorise any deduction from the purchase money to reimburse the promoters for their loss, nor order the petitioner to pay costs, but that the Court had jurisdiction to refuse him his costs and would do so. (*Ex parte Topple*, 19 W. R. 1058.)

Lands in
mortgage.

Where, by reason of the heir of the mortgagee

not being known, it was necessary for the vendor, ^{Section 82.} a transferee of the mortgage, to apply to the Court to appoint a party to convey to the company, the costs were held to be within section 82, but not within this section. (*Ex parte Cave*, 26 L. T. 176.)

The costs of a reference to the Master as to the ^{Lunatic.} propriety of the sale of part of a lunatic's estate to ^{Reference to Master.} a railway company are payable by the company (*Re Gawan Taylor*, 1 M. & G. 210), the sanction of the Lord Chancellor having to be obtained in all such cases in the first instance. (*Re Gawan Taylor*, 1 H. & T. 432; 6 Rail. Cas. 741.) And the company must pay the costs of the attendance of the heir-at-law before the Master and on the petitions (*Re Walker*, 7 Rail. Cas. 129); and also of the next of kin. (*Re Briscoe*, 4 N. R. 311; 2 D. J. & S. 249.)

Costs of the mortgagees of the fee, and other ^{Encumbrances.} mortgagees of the life estate, in relation to a petition for investment, are payable by the company. (*Re Brooke*, 30 Beav. 233. See *Re Webster*, 2 Sm. & Giff. App. VI.; but see also *Re Brooke*, 12 W. R. 1128.)

Unless the company insist on his being served ^{Service at instance of company.} (*Re Hungerford's Trusts*, 1 K. & J. 413), it is wholly unnecessary to serve an encumbrancer who makes no objection. (*Re Hatfield's Trusts*, 29 Beav. 870.)

On a petition by a tenant for life for the invest- ^{Encumbrancer of life estate.} ment of money paid into Court, the encumbrancer of the life estate being served, is entitled to his costs of appearance as against the company. (*Re Smith*, 14 W. R. 218.)

But where there were several mortgagees of a ^{Several mort-}

Section 80. life estate, who appeared separately on a petition by the tenant for life for investment, their costs were directed not to be paid by the company, but to be added to their debt. (*Re Thomas's Estate*, 10 Jur. N. S. 307.)

Paying off encumbrances on other part of estate. Costs of paying off encumbrances on another part of the estate of the owner are not payable by the company.

A leasehold interest is an encumbrance. (*Re Manchester, Sheffield, and Lincolnshire Railway Company*, 21 Beav. 162; *Ex parte Hardwicke*, 17 L. J. Ch. 422; *Re Yeates*, 12 Jur. 279; *Ex parte The Sheffield Town Trustees*, 8 W. R. 602.)

Application for payment off of mortgage. A company is not bound to pay the mortgagee's costs of appearing on an application by a tenant for life to pay to the mortgagee the amount of money in Court. (*Re Hatfield's Estate* (No. 2), 32 Beav. 252.)

Mortgagees and receiver. Where the land in respect of which the money was paid in had been mortgaged for the benefit of the creditors of the petitioner, a receiver appointed by deed, and the mortgagees and receiver had been served and had appeared, it was held that the company should pay their costs. Where a mortgagor neglects or fails to obtain the concurrence of the encumbrancers, it was held to be no ground for relieving the company from payment of costs. (*Re Nash*, 1 Jur. N. S. 1082.)

Encumbrancers prior to life estate. The costs of encumbrancers prior to the life estate, who have been served, are not payable by the company. (*Re Morris's Settled Estates*, L. R. 20 Eq. 470; *Re Hatfield's Estate*, 29 Beav. 370.)

Encumbrance. Where encumbrances were created, some pre-

viously to and others subsequently to the taking ^{Section 80.} of the lands, and the lands upon which the money ^{created} was reinvested were declared subject to them, the ^{after the} costs were payable by the company. (*Re Peyton*, 2 Jur. N. S. 1013.) ^{taking.}

Costs of paying off mortgages upon another part ^{Redemp-} of the settled estate are not payable by the com- ^{tion of} pany. (*In re Mark's Trusts*, W. N. 1877, 63.) ^{mortgage.}

The costs incurred in the matter in consequence ^{Encum-} and in connection with an encumbrance upon the ^{brance} fund created subsequently to the payment of it ^{after pay-} into Court are not to be borne by the company. ^{ment into} (*In re Jenkins Jones's Estate*, W. N. 1870, 7.) ^{Court.}

If the petitioner is out of possession when the ^{Petitioner} land is sold, the encumbrancer ought to be served. ^{out of} (*Re Hungerford*, 3 K. & J. 455.) ^{possession.}

Whenever the petition is simply for reinvest- ^{Late rule.} ment in land, and there are mortgagees or annu- itants whose rights are not otherwise affected by the petition, the proper course is to serve such mort- gagees or annuitants with a copy of the petition, and to pay them 40s. for costs, giving them at the same time an intimation that if they appear on the hearing they will probably have to pay their own costs. (*In re Gore Langton's Estates*, L. R. 10 Ch. 328.)

This rule applies to payment out of Court of ^{Applica-} such moneys to persons entitled, subject to encum- ^{tion of rule} brances, but the petitioners will be entitled to add to their costs of the petition, in addition to the 40s., a sum sufficient to cover the costs of an affidavit of service. (*In re Halstead United Charities*, L. R. 4 C. D. 48.)

A railway company served notices to treat for

Section 80 certain portions of an estate. They afterwards abandoned part of their undertaking, including the land comprised in some of their notices, but took the rest and paid the money into Court. The estate in question being the subject of a testamentary settlement before the abandonment, certain costs, charges, and expenses had been incurred by the tenant for life under the settlement, and certain other costs were subsequently incurred by him in an unsuccessful attempt to obtain compensation for not going on with the notice to treat in respect of the abandoned portions. These costs, charges, and expenses were directed to be paid out of the fund before investment. (*In re Strathmore Estates*, L. R. 18 Eq. 338; *Re Aubrey's Estate*, 17 Jur. 874.)

Second interim investment.

After one interim investment in Consols of money paid into Court, an application was made for its investment on mortgage security. It was held that this could not be treated as a permanent investment; that the Court had power under this section and section 70 to order the company to pay the costs of more than one interim investment, and in that case the company must pay the costs of the application and of the proposed investment, without any condition as to costs of any future permanent investment. (*In Re Sewart's Estate*, L. R. 18 Eq. 278; *In Re Blyth's Trusts*, L. R. 16 Eq. 468; *In re Flemon's Trusts*, L. R. 10 Eq. 612.)

Petition in a cause.
Parties to cause.

Where a petition has been presented, not only in the matter of the Act, but also in a cause, the current of authorities is strongly in favour of the company being required to pay the costs, not only

of the petitioner, but of the other parties whom it is necessary to serve. If, indeed, the parties appear in such a manner as to create unnecessary expense (as in *Melling v. Bird*, 17 Jur. 155), the company will not be required to pay such unnecessary expense; but it is an exception to the general rule that the company must pay the costs of all parties which have been occasioned by the company taking the land. The exception in this section is, that the company shall not be made to pay any costs occasioned by adverse litigation; but that is the only exception to the general principle. (*Haynes v. Barton*, L. R. 1 Eq. 421; *Dinning v. Henderson*, 2 De G. & Sm. 485; *Re Hull and Selby Railway Company*, 5 Rail. Cas. 458; *Picard v. Mitchell*, 12 Beav. 486; *Henniker v. Chafy*, 28 Beav. 621; *Brandon v. Brandon*, 9 Jur. N. S. 11; *Paterson v. Paterson*, 3 N. R. 657.)

Where real estate was devised to A. for life with remainder to trustees for sale with power to give receipts, and part of the estate was taken by a railway company, and the purchase money paid into Court, and after A.'s death a suit was instituted for the administration of the estate of the testator, and on that suit coming on for further directions a petition was presented by one of the parties on the record, praying to have the fund carried over to the credit of the cause, which petition was presented in the cause and in the matter of the Act, and came on to be heard with the cause, and had been served on the trustees for sale, and on all the other parties to the cause, several of whom appeared, and four counsel appeared for the different parties to the

Section 80. suit, and it was suggested, on the authority of *Hore v. Smith*, 14 Jur.55, 5 Rail. Cas. 592, that the money might have been paid to the trustees on their application after the death of A., prior to the institution of the suit, without service on any party, the sale being necessary, it was, however, held that the costs could not be separated, and that the costs of all parties served must be paid by the company according to the Act. (*Patten v. Gatty*, cited in judgment in *Haynes v. Barton*, 1 Dr. & Sm. 491; 17 Jur. 155.)

Reinvest-
ment in
lands sub-
ject of suit.

On a petition for the reinvestment in the purchase of lands, the subject-matter of a suit of purchase money paid in by a railway company, the usual petition having been presented in the matter of the Railway Companies Act, and the title of the lands sought to be purchased by the petitioner referred to one of the conveyancing counsel of the Court, upon whose approval the second petition had been presented, intituled in the cause of which the lands to be purchased were the subject-matter, it was held that the second petition was necessary, as the parties to the cause relating to the lands sought to be purchased were entitled to be served, and that the company must pay all the costs, notwithstanding the additional expense occasioned by the title to the lands being in litigation (*Carmael v. Proffit*, 23 L. J. Ch. 165). In another case (*Re Picton's Estate*, 3 W. R. 327), the decision in *Melling v. Bird* was followed by V.-C. Wood, he seeming to consider that the costs in that case were refused, not on the ground that they had unnecessarily increased the expense, but that such

costs should not be paid by the company at all Section 80.
 (see judgment in *Haynes v. Barton*, 1 Dr. & Sm. 493; and see *Sidney v. Wilmer*, 31 Beav. 333).
 In another case, it was held that though it was necessary to serve the other parties to a suit in which as well as in the Act a petition was presented, those parties ought not to have appeared, and, therefore, the company could not be required to pay the extra costs, all that was necessary being an affidavit of service on them. (*Wilson v. Foster*, 26 Beav. 398.)

A former petition in the suit having been pre-
 sented for the purpose of obtaining the direction
 of the Court as to the course to be taken with
 reference to a notice to treat, served by the com-
 pany, the property being thought to be worth more
 than the sum offered by the company, the result
 being that the sum offered by the company was
 accepted, the company was ordered to pay the costs
 of that petition. (*Haynes v. Barton*, 1 Dr. & Sm. 496.)

The company was ordered to pay the costs of
 parties to the suit, where a small portion of the
 land taken was subject to a mortgage, vested in
 trustees under a will, the trusts of which were in
 course of administration by the Court, an application
 in the suit being necessary to enable the trustees
 to join in the conveyance (*Re London and South
 Western Railway Act*, 1855, 2 J. & H. 390). This
 case was, however, reversed on appeal, on the
 ground of the circumstances being special, L.J.
 Knight-Bruce remarking that there never had been
 any contract between the company and the mort-
 gagee, nor had any notice ever been given to him

Petition
for opinion
of Court
on offer of
company.

Land
subject to
mortgage
vested in
trustees of
will sub-
ject of suit.

Section 80. as between him and the company; that there was nothing but a contract between the owner of the equity of redemption and the company, which was wholly silent on the question of costs; that, after that contract, the company could not have proceeded under the 112th section to pay off the mortgage. That it was a special case under very peculiar circumstances, and that it ought not to be drawn into a precedent. (32 L. J. Ch. 102.)

Suits in
another
Court au-
thorising
purchase.
Jurisdic-
tion.

Where purchase money standing to an account in one Court was sought to be applied to make up the purchase money of a purchase authorised in a suit in another Court, and the costs of the investment and of the petition were asked against the company in proportion to the sum asked to be paid out, the company were held to be liable to pay only the costs of the application, and all that the Court could do was to order payment to the vendor. (*Re Bagot's Settled Estates*, 14 W. R. 471.)

Separate
estate
jointly
charged.

Where two estates settled upon different trusts were jointly charged with certain encumbrances, which were, by arrangement between the two tenants for life, paid off by them out of their private moneys in certain proportions, and part of one of the estates was taken under the Act, and the purchase money paid into Court, on petition by the tenant for life of the land taken for payment to him out of the fund in Court of the amount of the encumbrance paid off by him, and for the investment of the residue of the fund, the company was liable for the costs of the appearance of the persons interested in remainder. (*Re Romney*, 3 N. R. 287.)

Whenever a person is properly served he has a right to have his costs of appearance. (*Re Burnell*, 10 Jur. N. S. 289.)

Section 80.

Costs of appearance.

Where lands devised in trust for many persons in aliquot shares were taken, and the purchase money paid into Court, upon petition by the surviving trustee, and four of the *cestuis que trust* for payment out, to which the remaining *cestuis que trust* were respondents, and appeared by four separate counsel, the company was ordered to pay their costs, except in the case of one who had originally been a co-petitioner. (*Re Long's Trust*, 10 Jur. N. S. 417.)

Respondent originally co-petitioner.

Where a sum of money was in Court to the account of a prebendary in respect of lands forming part of the estates of the prebend, and the property of the prebend became subsequently vested in the Ecclesiastical Commissioners, who petitioned for payment of the fund, and the prebendary was served with the petition, though he had, as the petition had been originally prepared, been made a co-petitioner, he was not entitled to his costs of appearance, not on the ground that he had been improperly served, but because no additional expense would have been incurred if he had joined in the petition. (*Re Prebend of St. Margaret, Leicester*, 10 L. J. N. S. 221.)

Tenants in common interested in money paid into Court are entitled to their costs of appearing separately, on an application by one of them for payment of the money to an encumbrancer on the whole. (*In re Braze*, 9 Jur. N. S. 454.)

Tenants in common.

If a petition for reinvestment in land be served

Service of vendors on

Section 80. upon the proposed vendors, their costs will have to be paid by the petitioners. (*Re Dylar's Estate*, 19 Jur. 975.)

Reinvestment under private Act. Trustees and remaindermen. Where the money, the subject of a settlement, was sought to be laid out in the purchase of other lands under the provisions of a private Act, the company was not bound to pay the costs of the trustees and remaindermen. (*Re Bowes's Estate*, 4 N. R. 315.)

Queen Anne's Bounty. In a petition by an incumbent for reinvestment of money paid in by a railway company for purchase of part of the glebe land, the costs of the governors of Queen Anne's Bounty were ordered to be paid out of the fund. (*Re Incumbent of Whitfield*, 1 J. & H. 610.)

Petition for payment of dividends to new trustees. Where purchase money of settled lands was paid into Court and invested, and on the petition of the trustees of the settlement the dividends ordered to be paid to them by name or one of them, and both the trustees died, the Court on the petition of the new trustees declined to order the Local Board to pay the costs of the second petition. (*Re Pryor's Settlement Trusts*, 35 L. T. 202; *Re Audenshaw's Trusts*, 1 N. R. 255; *Re Hordern*, 2 De G. & Sm. 263; *Re Byron*, 7 W. R. 367.)

Executors. Where on petition the dividends had been ordered to be paid to the mortgagee of the tenant for life during the life of the latter, on the death of the mortgagee, the company were not compelled to pay the costs of the executors of the mortgagee and a purchaser from them, on a petition by the tenant for life for payment of the dividends to them. (*Re Byron*, 5 Jur. N. S. 261.)

Where the purchase money of a leasehold interest purchased by a railway company was paid into Court to an account "*Ex parte* the company, the account of the two lessees," and the dividends were ordered to be paid to one lessee and the executrix of the other, and on the marriage of the executrix a petition for payment of the dividends to the husband and the other lessee was served on the company, the petitioners were ordered to pay the costs of the company. (*Ex parte Horderm*, 2 D. J. & S. 253.) Section 80.
Marriage
of execu-
trix.

Dividends of stock arising from the investment of purchase money of land taken by a railway company were ordered to be paid to the incumbent of a parish for the time being, but the order only provided for the payment of the costs of the then incumbent of the application on which the order was made. A subsequent incumbent executed a power authorising an attorney to receive the dividends for him under the order, and filed affidavits showing himself to be the incumbent. The company was ordered to pay his costs thus incurred. (*Ex parte the Incumbent of Guilden Sutton*, 8 D. M. & G. 380.) New in-
cumbent.

Where a tenant for life for his own benefit served a petition for the investment of funds in Court and payment of the dividends to him for life, and served the petition on a trustee as representing the remaindermen, the costs of such service were not thrown on the company. (*In re Dowling's Trusts*, 24 W. R. 729.) Tenant for
life. Extra-
ordinary
invest-
ment.

Where an order had been obtained on petition for payment to a tenant for life of dividends of a Orders on
death of
tenant for
life.

Section 80. sum of stock representing purchase money paid into Court by a company which had taken lands in settlement, the tenant for life having died, the guardian of an infant tenant in tail having entered into receipt of the rents and profits, and there being at the death of the tenant for life two dividends, and a proportionate part of a third which had not been received by him, it was held that the order for the payment to the executors of the tenant for life of the dividends and the apportioned part of a dividend might have been obtained by summons, but the order for the payment of the other apportioned part of a dividend, and for future payment of the dividends to the guardian of the infant tenant in tail, could properly be made only on a petition, of which the company must pay the costs. (*In re Jolliffe's Estate*, L. R. 9 Eq. 668 ; *Re Lye's Estates*, 13 L. T. N. S. 664.)

Commons. A sum paid to a committee of commoners was paid into Court, and the various persons who in chambers established their claims to share in the funds were held entitled to receive three guineas each for their costs. (*Waterlow v. Burt*, 18 W. R. 683.)

Episcopal and Capitular Estates Act. In cases under this Act and the Episcopal and Capitular Estates Act, it has been decided that companies must pay the costs of reinvestment in leaseholds in the same way as if the purchase had been of freeholds, and that such purchase of leaseholds could not properly be considered as buying up an encumbrance. (*Ex parte The Bishop of London*, 2 D. F. & J. 14 ; *Ex parte Dean and Canons of Manchester*, 28 L. T. 184.)

A company which has compulsorily taken land and applied it to the purposes of the undertaking should pay the purchase money into Court before notice of motion for that purpose is served. But where difficulties had arisen as to the title, the company having the possession, and having used the land, the costs of a motion to pay the purchase money into Court were directed to be costs in the cause. (*Williams v. Llanelly Railway Company*, 19 L. T. N. S. 310.)

Section 80.

Payment
into Court
before
motion.

Two portions of a settled estate had been taken by different corporations, and the purchase money had been paid into Court and dealt with by different branches of the Court. Two petitions being presented for reinvestment in land, the company were only ordered to pay the costs of one. (*In re Gore Langton's Estates*, L. R. 10 Ch. 328.)

Two
petitions in
different
Courts.

Where lands settled in the same manner have been taken, and the money paid into Court and invested, and the tenant for life afterwards dies, the orders directing payment of the dividends of the several funds to the person next entitled may all be obtained upon the same petition, and the costs of only one petition will be allowed against the company. (*Re Lord Brokes' Estate*, 1 N. R. 568.)

Practice
on death of
tenant for
life.

And where the petitioners are entitled to part of the money under a will, and to the other part under a settlement, and the trustees of the will were made parties to one petition, and the trustees of the settlement to the second petition, and both sets of trustees appeared by separate solicitors and counsel, it was held that the statements in the

Two sets of
trustees.

Section 80. two petitions should have been included in one, and the company were ordered to pay the costs of the first, and five guineas only towards the petitioners' costs of the second petition, and three guineas for the costs of each set of trustees. (*Re Pattison*, L. R. 4 C. D. 207.)

Transfer
of fund to
account of
suit alone.

Where the purchase money has been paid into Court to the usual account, and has afterwards been transferred to the credit of a suit to an account not intituled in the matter of the special Act, the Court has no jurisdiction to make the company pay the subsequent costs of paying the fund out of Court, and the petition as against the company will be dismissed with costs. (*Fisher v. Fisher*, L. R. 17 Eq. 340; *Brown v. Fenwick*, 14 W. R. 257.)

Payment
out prac-
tice.

Where a person absolutely entitled to a sum under £300 applies by petition for payment out he will receive his costs. (*In re Clarke's Devisees*, 6 W. R. 812.)

Co-heirs.

Where the land taken belonged to a devisee for life, with reversion to the testator's heirs, and the company paid the purchase money into Court, they were required to pay the costs of two petitions by two co-heirs who claimed the fund on the death of a tenant for life, but not the costs occasioned by affidavits of the petitioners in opposition to adverse claims to the fund. (*In re Spooner's Estate*, 1 K. & J. 220.)

Service of
petition of
tenant for
life.

The petition of a tenant for life for reinvestment in the purchase of land need not be served upon any person entitled in remainder. (*Ex parte Staples*, 1 D. M. & G. 294.)

The company must pay the costs of a motion to dissolve an injunction obtained against them through their non-compliance with the provisions of the Act. (*Woodard v. Eastern Counties Railway Company*, 3 W. R. 330.)

Section 80.

Injunction
for non-
compliance
with Act.

A reinvestment, of money paid into Court for purchase of leaseholds, in freeholds is within section 69, and the costs must be paid by the company, although the petitioners are absolutely entitled (*In re Parker's Estate*, L. R. 13 Eq. 495). The company were not liable to pay the costs where the petitioner being absolutely entitled had resettled the property and dealt with the reversion only, and asked for payment of the dividends to himself. (*In re Pick's Settlement*, 10 W. R. 365.)

Reinvest-
ment in
freeholds.Parties
absolutely
entitled.

In a case where an estate was limited to the testator for life, with remainder to his first and other sons successively in tail, remainder to himself in fee, the testator made his will, devising all his real estate in strict settlement, and after the date of his will a company purchased part of the estate, under the powers of the Act, and paid the purchase money into Court, it was held that the company should pay the costs of investing the purchase money in real estate to be settled to the uses of the will. It was doubtful whether, if he had died intestate, his heir-at-law would have been entitled to an investment at the expense of the company. (*In re De Beauvoir*, 2 D. F. & J. 5.)

Resettle-
ment.Intestacy.
Costs of
heir-at-
law.

Upon a petition praying for the approval of the reinvestment in land of a sum of money paid into Court, where, by the contract, costs usually borne by the vendor were thrown upon the purchasers,

Restricted
contract.

Section 80. the taxing master was directed to distinguish such of the costs as were properly vendor's costs, and such costs were to be borne by the petitioners, and be paid out of the balance of the money in Court. (*In re Temple Church Lands, Bristol*, 26 W. R. 259; *Ex parte Governors of Christ's Hospital*, L. R. 20 Eq. 605.)

Redemption of land tax. The application of purchase money to redemption of the land tax is a reinvestment in land, under section 69, and the costs are payable by the company. (*Re London, Brighton, &c., Railway Company*, 18 Beav. 608; *In re Bethlem Hospital*, L. R. 19 Eq. 457; *Ex parte Beddoes*, 2 Sm. & Giff. 466; *Ex parte Drefford*, 2 Y. & C. Ex. 522; *Ex parte Northwich*, 1 Y. & C. Ex. 166.)

Petitioners absolutely entitled. Encumbrancers. The costs of reinvestment in land must be paid by the company, although the petitioners are absolutely entitled, but not the costs of encumbrancers subsequent to the payment into Court. (*Re Jones*, 18 W. R. 312.)

Estate purchased beyond amount of money in Court. In a case where the petitioner had reinvested a sum of £644 paid into Court by a railway company in the purchase of an estate which cost £1,000, the company was ordered to pay the same costs as the petitioner would have been entitled to if the estate purchased by him had cost only £644. (*Ex parte Hodge*, 16 Sim. 159; *Ex parte King's College, Cambridge*, 5 De G. & Sm. 621.)

Alterations. The costs of obtaining orders for the investment of purchase moneys in alterations of almshouses, were not ordered to be borne by the company (*Re The Buckinghamshire Railway Company*, 14 Jur. 1065); nor, where a railway had severed the

arable lands from the farm buildings, were the company required to pay the costs of obtaining orders for the application of the purchase money in the erection of new farm buildings (*Ex parte Melward*, 27 Beav. 571). But in a later case, where land belonging to the trustees of a charity had been taken, and the purchase money had been paid into Court, and the Court by a former order had directed the trustees to apply the money so paid, or to be paid, for the purpose of improving the supply of water to the town where the charity property was situated, the costs of an application by the trustees for payment to them of the fund in Court to be applied for that purpose were ordered to be borne by the company, the Master of the Rolls remarking that the petition was in substance either for payment of the money out of Court to some one absolutely entitled, or for the purpose of reinvestment, and that in either view of the case the costs must be paid by the company. (*In re Lathropp's Charity*, L. R. 1 Eq. 467.)

In a reinvestment in charity lands the company is not required to pay the costs of a petition under Sir Samuel Romilly's Act. (*Ex parte The Incumbent of Alsager*, 2 W. R. 324.)

Where a proposed reinvestment in land falls to the ground, owing to a defect in the vendor's title, or owing to the expense necessary to perfect the title, that being a matter of which the intending purchaser can have no cognizance until after the approval of the Court of the proposed purchase and reference as to title, the company

Section 80.

Reinvestment in charity land.

Abortive purchase.

Section 80. must pay the costs; but not if costs are incurred in relation to a proposed purchase not sanctioned by the Court. (*Re Corney*, 20 W. R. 407; *Ex parte Rector of Holywell*, 2 Dr. & Sm. 463; *Ex parte Vaudrey's Trusts*, 3 Giff. 224; *Re Woolley*, 17 Jur. 850; *Re Macdonald's Trusts*, 2 L. T. N. S. 168.)

Prosecution of inquiries as to title to a certain extent only. Where the purchaser had prosecuted the inquiries as to title to a certain extent, and then abandoned them, the costs were thrown on him. (*Ex parte Copley*, 4 Jur. N. S. 297.)

Reinvestment not approved by Court. And where the proposed purchase was not approved of by the Court, the company's costs were ordered to be paid out of the fund. (*In re Hardy's Estate*, 18 Jur. 370; *Ex parte Stevens*, 15 Jur. 243.)

Reinvestment in land abandoned for interim investment. After a contract had been entered into for re-investment in land, a petition was presented for interim investment in the funds. It was held that the proceeding was not vexatious, and that the company ought to pay the costs. (*Re The Liverpool, &c., Railway Company*, 17 Beav. 392.)

Omission of usual words. In orders directing a company to pay costs, the omission of the usual words "except such costs, if any, as are occasioned by litigation between adverse claimants," ought not to be ordered except in very clear cases. The words "such as are occasioned by litigation between adverse claimants" refer to "costs," and not to "proceedings."

Adverse claims under a will. Where land devised by a will was taken by a railway company, and the money paid into Court, upon adverse claims to it arising under the will, the devisees appearing by separate counsel on a

petition for payment out, and arguing the question Section 80.
 arising between them, the case was held not to be
 one in which the words of exception could properly
 be omitted from the order. (*Re Cant's Estate*,
 1 D. F. & J. 153; *In re Courts of Justice Commis-*
sioners, W. N. 1868, 124.)

Where the claimant's title is doubtful, and the Doubtful
title of
landowner.
 Court has to determine the extent of his interest,
 he must bear the costs. (*Ex parte Cooper*, 5 Rail.
 Cas. 233.)

Where before payment out a suit is necessary Adminis-
tration suit
necessary
before pay-
ment out.
 for administration of the landowner's estate, of
 which the fund forms a part, such suit not being
 occasioned by adverse claims, the company must
 pay the costs of all defendants who have been
 served with a petition for transfer of the fund to
 the credit of the cause; but, *semble*, it was not
 necessary to serve any of them since the petition
 was not one for payment out. (*Eden v. Thompson*,
 2 H. & M. 6.)

It seems that an order under this section cannot Alteration
of order
under this
section.
 be altered in favour of a company, unless they
 appeal. (*Re Gregson*, 13 W. R. 193.)

In a case where suitable lands had been found Suit neces-
sary in re-
investment
in land.
 for a reinvestment, while the examination of the
 title was pending, the vendor died intestate,
 leaving an infant heir. A bill being thus rendered
 necessary against the heir, and also a second
 petition intituled in the cause on the question of
 costs, the company were required to pay the costs
 of the second petition; but the suit was held to
 be adverse litigation within this section. (*Ar-
 mitage v. Askham*, 19 Jur. 227.)

- Section 80.** Where upon a petition for payment out of a sum in Court several claimants appeared, the Court on deciding that the petitioner was entitled to the whole sum, ordered the railway company to pay the costs of the petition and of the proceedings thereunder, except such costs as were occasioned by the litigation between the adverse claimants, and further ordered the unsuccessful claimants to pay the petitioners such costs as the taxing master should find to have been occasioned by their adverse claims. And, except in a clear case, the Court should not specify in the order what costs fall within this section, but leave any question on that subject to the decision of the taxing master. (*Ex parte The Great Southern and Western Railway Company*, L. R. 11 Eq. 497; *Re Alston's Estate*, 28 L. T. R. O. S. 337, 339. For form of orders, see *Ex parte Great Southern and Western Railway Company*, L. R. 11 Eq. 497.)
- Adverse litigation.**
- Form of Order.**
- Question under will.** A testator gave and bequeathed to his wife his property of every description coupled with words appropriate to personalty. At his decease he was entitled to a sum of Bank Three per Cent Annuities in Court, representing certain real property which had been taken by a company. The testator's heir was an infant, and appeared on a petition presented by the widow, asking for payment to her of the fund in Court, or if the Court should be of opinion that she was not entitled to such fund, that the dividends might be paid to her during the heir's minority, she undertaking to apply the same for his benefit. As there were

adverse claims, the company was ordered to pay Section 80. only one set of costs. (*Ex parte Yates*, 17 W. R. 878; *Ex parte Styant*, Joh. 387.)

Where a company has paid money into Court in respect of land taken, the title to which is disputed, but one of the claimants subsequently abandons his claim, the company are not required to pay the costs of a petition for payment out. Abandonment of claim by one claimant. (*Re English*, 13 W. R. 932.)

Where the difficulties occur, and expense is incurred in ascertaining the rights and shares of the parties entitled to the money, these are not costs occasioned by adverse litigation. Ascertaining shares of parties entitled. (*Re Singleton's Estate*, 11 W. R. 871.)

This section contemplates not one application in respect of several reinvestments, but several applications; and where it was shown to be for the benefit of the parties, the Court ordered a company to pay the costs of a third reinvestment (*Re The Trustees of St. Bartholomew's Hospital*, 4 Dr. 425; *Re Hereford, Hay, and Brecon Railway Company*, 13 W. R. 134; *Brandon v. Brandon*, 9 Jur. N. S. 11). And in one case a fourth reinvestment was allowed. (*In re The Merchant Taylors' Company*, 10 Beav. 485.) Several applications for successive investments.

Where money has been paid in by several companies, the costs of reinvestment in land must be borne by them equally except under special circumstances, with the exception of the *ad valorem* stamp, the cost of which must be borne by them rateably. Several companies. (*Ex parte Bishop of London*, 2 D. F. & J. 14; *In re Leigh's Estate*, L. R. 6 Ch. 887; *London and Brighton Railway Company v. Shrop-* *Ad valorem* duty.

Section 80. *shire Union Railway Company*, 23 Beav. 605; and see *Ex parte Corporation of Sheffield*, 21 Beav. 162.)

Subsequent amalgamation of some of the companies paying in. And where portions of the same estate were taken by four different companies, three of which were afterwards amalgamated, the costs of a petition for payment out of Court were ordered to be borne equally by the subsisting two companies. (*Ex parte Gaskell*, L. R. 2 C. D. 360; *Ex parte Corpus Christi College, Oxford*, L. R. 13 Eq. 334.)

Great inequality. But this rule does not apply where there is great inequality in the amount of the funds, in which case the costs of reinvestment in land must be borne by the different companies rateably (*Ex parte The Governors of St. Bartholomew's Hospital*, L. R. 20 Eq. 369); but not necessarily the costs of the petition (*Ex parte Christ Church*, 9 W. R. 474). The surveyor's fee is borne by the several companies rateably. (*Ex parte Corporation of London*, L. R. 5 Eq. 418.)

Where portion of sum paid in by one company, and whole of sum paid in by other re-invested. Where only a portion of the sum paid in by one company, and the whole of a sum paid in by another company were invested, the costs were directed to be borne by the two companies equally. (*Ex parte Master, &c., of Trinity College, Cambridge*, 18 L. T. N. S. 849; *Re Merton College*, 3 N. R. 598; 33 Beav. 257; 1 D. J. & S. 361.)

Lease of line. Where money was paid in by three companies, one of which leased its line to one of the others for 999 years, the costs of reinvestment were ordered to be borne by the three companies equally. (*Re Carlisle and Silloth Railway Company*, 33 Beav. 253.)

And where part of a fund in Court had been paid in by the Crown, and part by two railway companies in respect of lands taken, the cost of reinvestment must be paid by the companies equally, except so far as they are increased by the purchase money exceeding that portion of it which consisted of the money paid in by the companies. (*Attorney-General v. Mayor, &c., of Rochester*, 15 W. R. 765; and see also *Ex parte Hodge*, 16 Sim. 159.)

Where money had been paid in by seventeen companies, four of whom, this Act not being incorporated with their special Acts, were not ordered to pay cost; the other companies were ordered to pay their share of the costs, which would be in seventeenths. (*Ex parte Ecclesiastical Commissioners*, 13 W. R. 576.)

The rule in the *Bishop of London's Case* will only be departed from in cases of oppression; for instance, where a particular company has been brought frequently before the Court for the investment of small instalments. (*Ex parte Governors of Christ's Hospital*, 2 H. & M. 166.)

Where glebe lands had been taken by a railway company, and the purchase money paid into Court, and an order had been made on the petition of the rector for its investment, and for the payment of the dividends to him for his life, and for payment by the company of his costs, the company having since become insolvent, leaving part of the costs unpaid, part of the fund in Court was ordered to be sold for payment to the solicitors of the rector of the amount of costs remaining due. (*In re Glebe Lands of Great Yeldham*, L. R. 9 Eq. 68.)

Section 80. Where by the contract certain costs are thrown upon the proposed purchaser, the Court will not decide the question whether such costs are payable by the company, but will leave it to the taxing master. (*In re Mason's Trusts*, W. N. 1872, 77.)

Husband. Where a married woman is the petitioner, her husband, having no adverse interest, must be made a co-petitioner. (*In re Osborne's Estate*, W. N. 1878, 179.)

Trustee and cestui que trust may appear separately. On a petition for reinvestment, the trustee and cestui que trust may appear separately. (*Ex parte Metropolitan Railway Company*, W. N. 1868, 204.)

Reconstitution of charity. The company must pay the costs of a petition for payment of corpus or dividends in respect of a new scheme, sanctioned for a charity where such new scheme has not become necessary through any act of the trustees of the charity, but through circumstances over which the trustees have had no control. (*In re Shakespeare Walk School*, L. R. 12 C. D. 178.)

CONVEYANCES OF LANDS.

§ 81. Form and Effect of the Conveyance.

§ 82. Costs.

§ 83. Taxation of Costs.

Form and Effect of the Conveyance.

LXXXI. Conveyances of lands to be purchased under Section 81. the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the Schedules (A) and (B) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attended by express declaration, or by construction of law, on the estate of interest so thereby conveyed, and to bar and to destroy all such estate tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Costs.

Section 82. LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Costs
before
convey-
ancing
counsel.

The costs incurred before conveyancing counsel are payable under this section by the company, and, being liable to taxation, a proper bill of them should be delivered to the company. (*In re Spooner's Estate*, 1 K. & J. 220.)

Applica-
tion to
Court to
release
land taken
from mort-
gage.

Where the land taken is the subject of a suit in Chancery, and the landowner has agreed to sell to the company the fee simple, on a part being found to be subject to a mortgage, the company must pay the costs of an application to the Court to release that part from the mortgage. (*Re London and South Western Railway Act*, 1855, 2 J. & H. 392.)

Money
deposited
under s. 85.

Money deposited under section 85 will be ordered to be paid out to the company on their compliance with that section without any deduction for costs under this section. (*In re London and Southampton Railway Extension Act*, 16 Sim. 165 ; and see cases under section 85.)

Apportion-
ment of
ground-
rent.

The costs of apportioning ground rents are not payable under this section, but possibly might be

payable if the matter came under section 80. (*Ex parte Buck*, 1 H. & M. 519.)

Section 82.

S. 80.

As to the incorporation of this section with the special Act, see sections 1 and 6.

Incorporation with special Act.

Where the company require that letters of administration shall be taken out to the estate of the landowner, the property taken being leasehold, and the company take an assignment from the administrator, they must bear the costs of taking out the letters of administration. (*In re Liverpool Improvement Act*, L. R. 5 Eq. 282; overruling *In re South Wales Railway Company*, 14 Beav. 418.)

Letters of administration.

But where, on taking land from a colliery company, a railway company entered into an agreement to carry the vendor's coals at a fixed price, they were not called upon to pay the costs of such agreement. (*Re Lietch and Kewney*, 15 W. R. 1055; *Ex parte Cave*, 26 L. T. 176.)

Agreement as to carrying coals at fixed price.

Where land was taken from the transferee of a deceased mortgagee, whose heir-at-law could not be found, the company were compelled to pay the costs of appointment by the Court of a person to convey in his stead. (*Re Nash's Estate*, 4 W. R. 111.)

Appointment by Court of person to convey.

The company, when taking lands belonging to a charity, must pay the costs of enrolling the conveyance of substituted lands under the Mortmain Acts, since probably such conveyance would, if not enrolled, be void. (*Ex parte Governors of Christ's Hospital*, 4 N. R. 14.)

Charity enrolment of conveyance of substituted lands. Validity of conveyance.

Taxation of Costs.

Section 88. LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery, or by a master in Chancery in *Ireland*, upon an Order of the same Court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an Order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

Proper bill
should be
delivered.

A proper bill of the costs incurred before the conveyancing counsel, such costs being liable to taxation, should be delivered to the company. (*In re Spooner's Estate*, 1 K. & J. 220.)

ENTRY UPON LANDS.

- § 84. Payment or Deposit of Price, or Consent of Owner, before Entry, except to survey and mark out.
- § 85. Entry upon Lands before Purchase on making and giving Bond.
- § 86. Payment in of Deposit and Cashier's Receipt.
- § 87. Investment, Application, and Payment out of Deposit.
- § 88. Payment into Bank when Office of Accountant-General closed.
- § 89. Penalty on Entry without complying with these Provisions. Recovery of Penalty.
- § 90. Decision of Justices as to Right of Entry not conclusive.
- § 91. Proceedings in Case Owner refuse to give up Possession.

*Payment or Deposit of Price, or Consent of Owner,
before Entry, except to survey and mark out.*

LXXXIV. The promoters of the undertaking shall not, Section 84.
except by the consent of the owners and occupiers, enter
upon any lands which shall be required to be purchased
or permanently used for the purposes and under the
powers of this or the special Act, until they shall either
have paid to every party having any interest in such
lands, or deposited in the Bank, in the manner herein
mentioned, the purchase money or compensation agreed or
awarded to be paid to such parties respectively for their
respective interests therein: Provided always, that for the
purpose merely of surveying and taking levels of such
lands, and of probing or boring to ascertain the nature of
the soil, and of setting out the line of the works, it shall
be lawful for the promoters of the undertaking, after
giving not less than three nor more than fourteen days'

Section 84. notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

All interests to be provided for.

A deposit must be made or the purchase money paid in respect of every interest before entry under this section. (*University Life Assurance Society v. Metropolitan Railway Company*, W. N. 1866, 167.)

Mortgagees.

Mortgagees and encumbrancers can claim the benefit of this section, the plain inference from the provisions of sections 108—114 being that a company is not entitled to take possession of land subject to a mortgage, much less to destroy the buildings standing upon the land, without paying off the mortgage. So, where a person took land as tenant from year to year, under an agreement, which provided that if the landlord should determine the tenancy within twenty years, the tenant should have the option of removing any buildings erected by him, or having a charge on the land and buildings for twenty years from the date of the agreement for a twentieth part in each year of the cost of the buildings, and the tenant erected buildings, on the land being taken under this Act the company were held to be bound by this section. (*Rogers v. Dock Company at Kingston-upon-Hull*, 4 N. R. 494.)

Steamboat pier.

The alteration and diversion of a steamboat pier, and temporary provision for the accommodation of traffic, together with the substitution of an entirely new pier on completion of the works, does not bring the owners of the pier within this

section. (*Temple Pier Company v. Metropolitan Board of Works*, 13 W. R. 535.) Section 84.

The company must settle with all persons having any interest in the land. (*Inge v. Birmingham, Wolverhampton, and Stour Valley Railway Company*, 3 D. M. & G. 658.) Must settle with all persons having any interest.

A company must pay for the whole even though they enter upon only a part. (*Barker v. North Staffordshire Railway Company*, 2 De G. & S. 55.) Entry upon part.

A railway company having power to purchase a plot of land for their railway, entered upon the same to survey and take levels thereof, and probe and bore to ascertain the nature of the soil and set out the centre line of the railway, and for that purpose dug a trig line or trench two inches deep and fourteen inches wide across the plot of land, but gave the owner of the land no previous notice of such entry as required by this section. Five days after the trig line was made, the owner of the land discovered the fact, and nine days from such discovery he filed his bill for an injunction. Upon affidavits on the part of the company that the surveying and setting out of the line of railway was completed on the day the trig line was made, and that they had no occasion to enter upon the land until they had taken the legal steps for using it, the Court refused the injunction, but reserved the costs. (*Fooks v. Wilts, Somerset, and Weymouth Railway Company*, 5 Hare 199.) Entry without notice.

Bringing waggons, rails, and other implements on the land with the assent of the occupying tenants has been held not to be a taking possession What is not taking possession.

Section 84. within the meaning of this section. (*Standish v. Mayor, &c., of Liverpool*, 1 Dr. 1.)

Abstrac-
tion from
stream of
water.

The abstraction of water from a stream does not bring a riparian owner within this section as being a taking of his portion of the stream, but entitles him only to proceed under section 68. (*Bush v. Trowbridge Waterworks Company*, L. R. 19 Eq. 291.)

Diversion
of roads.
Railways
Clauses
Act, s. 16.

Section 16 of the Railways Clauses Act is prefaced by the words "subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith," the company may exercise the powers which are specified. Consequently, where this Act is incorporated with the special Act, if the land upon which any new road or footway is to be constructed under section 16 of the Railways Clauses Act is land which is to be permanently used under the powers of the special Act, then before it can be so used the company must acquire it and pay for it. (*Rangeley v. Midland Railway Company*, L. R. 3 Ch. 306.)

Permanent
user.

The paramount object of the company's special Act incorporating this and the Railways Clauses Acts, is to enable the company to make the railway; and the 6th section of the Railways Clauses Act refers to this Act as that under which the compensation for lands "taken or used" under the Railways Clauses Act is to be ascertained, while the 16th section of the same Act gives power to construct the line by means of arches; and this section provides that compensation shall be made for lands "required to be purchased or permanently used" by the company, and therefore companies are empowered permanently to use lands without

actually taking the whole interest therein. (*Pin-* Section 84.
chin v. London and Blackwall Railway Company,
 1 K. & J. 34.)

*Entry before Purchase on making Deposit and
 giving Bond.*

LXXXV. Provided also, that if the promoters of the un- Section 85.
 dertaking shall be desirous of entering upon and using any
 such lands before an agreement shall have been come to or
 an award made, or verdict given for the purchase money or
 compensation to be paid by them in respect of such lands,
 it shall be lawful for the promoters of the undertaking to
 deposit in the Bank by way of security, as hereinafter men-
 tioned, either the amount of purchase money or compensa-
 tion claimed by any party interested in or entitled to sell
 and convey such lands, and who shall not consent to such
 entry, or such a sum as shall, by a surveyer appointed by
 two justices in the manner hereinbefore provided in the
 case of parties who cannot be found, be determined to be
 the value of such lands, or of the interest therein which
 such party is entitled to or enabled to sell and convey, and
 also to give to such party a bond, under the common seal
 of the promoters if they be a corporation, or if they be not
 a corporation under the hands and seals of the said pro-
 moters, or any two of them, with two sufficient sureties to
 be approved of by two justices in case the parties differ, in
 a penal sum equal to the sum so to be deposited, condi-
 tioned for payment to such party, or for deposit in the Bank
 for the benefit of the parties interested in such lands, as the
 case may require, under the provisions herein contained, of
 all such purchase money or compensation, as may in
 manner hereinbefore provided be determined to be payable
 by the promoters of the undertaking in respect of the lands
 so entered upon, together with interest thereon, at the rate
 of five pounds per centum per annum, from the time of

Section 85. entering on such lands, until such purchase money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained ; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

All interests to be provided for.

A deposit must be made or the purchase money paid to every person having any interest before entry. (See *University Life Assurance Society v. Metropolitan Railway Company*, W. M. 1866, 167.)

Refusal of sum awarded. Action for deposit.

The owner of certain land required by a railway company, on being served with the usual notice, stated his desire to have the amount to be paid to him for compensation and damages settled by arbitration. Arbitrators were accordingly appointed by the landowner and the company. These arbitrators not being able to agree upon an umpire, an umpire was ultimately appointed by the Commissioners of Railways. In the meantime the company having paid into the Bank the amount claimed by the landowner, and having given the bond required in such cases by the Act, entered upon the land. The arbitrators not having made the award in time, the question of compensation and damage came before the umpire, who made his award, giving the landowner a much less sum than that claimed by him from the company. The landowner having

refused to deliver an abstract of title or to take Section 85. any steps for conveying the land to the company, the company proceeded under section 76 and paid into the Bank the sum awarded by the umpire. They then presented a petition for payment out to them of the sum paid in by them before taking possession of the land. The landowner in the meantime had taken proceedings at law to set aside the award on various grounds but without success, and was at the time when the petition was presented prosecuting an action against the company to recover the amount originally claimed by him. Under these circumstances the landowner opposed the petition of the company, but the Lord Chancellor made the order prayed, holding that the landowner was not entitled to avail himself of the security provided by the Act in the deposit of the money, and at the same time to repudiate the proceeding, the benefit of the result of which it was the object of the Act thus to secure to him. (*In re Charles Fooks*, 2 M. & G. 357.)

For costs under this section, see section 80. Costs.

This section applies exclusively to compulsory purchases. (*Bedford and Cambridge Railway Company v. Stanley*, 2 J. & K. 746.)

The provisions of the 68th section apply to the s. 68. case of land taken under those of this section. (*Adams v. London and Blackwall Railway Company*, 2 M. & G. 118.)

The time within which a railway company was authorised to take lands expired on the 4th of ^{Expiration of time.} August, 1848. Long before this period they gave notice to a landowner to treat, and afterwards

Section 85. delivered to the plaintiff, to whom the lands had been in the meantime devised, a bond, and paid the estimated value of the lands comprised in the notice into the Bank under this Act. Under an Amendment Act, the powers of which extended beyond 1848, the company were authorised to take the land included in the notice, and on August 3rd, 1848, they gave a notice to the plaintiff that, in pursuance of the powers of both those Acts, they intended to take the lands. After the 4th of August, 1848, but without taking any further steps under the Acts, the company entered the land. On a motion for an injunction, the Court declined to interfere, on the ground that, although the company might not have been entitled to take possession under their compulsory powers, they were able, by some proceeding under the second Act, to obtain the land, and the motion was ordered to stand over, with liberty to the plaintiff to bring an action. (*Williams v. South Wales Railway Company*, 3 D. & S. 354.)

Receiver. Should a receiver appointed by the Court be in possession, leave of the Court must be obtained by the company before proceeding under this section. (*Tink v. Rundle*, 10 Beav. 318.)

Continuance of the possession after the three years. If the entry is made before the expiration of the three years limited by section 121, continuance of possession is lawful after the expiration of that period. (*Worsley v. South Devon Railway Company*, 16 Q. B. 539; *Armitstead v. North Staffordshire Railway Company*, 16 Q. B. 526; *Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 9 Hare, 436.)

A company cannot avail itself of the power given ^{Section 65.} by this section, unless there is urgent necessity for ^{Pressure.} immediate entry. (*Field v. Carnarvon and Llanberis Railway Company*, L. R. 5 Eq. 190. See *Willey v. South-Eastern Railway Company*, 6 Rail. Cas. 100, 1 M. & G. 58.)

A company cannot enter upon part of the lands ^{Entry upon} comprised in the notice to treat until they have ^{part.} paid a deposit in respect of the whole. (*Barker v. North Staffordshire Railway Company*, 5 Rail. Cas. 401; 2 D. & S. 55.)

Where, under section 92, a counter-notice has ^{Counter} been served, requiring the company to take the ^{notice.} ^{s. 92.} whole of a property, the company are not at liberty to take possession of any part of such property until they shall have deposited the value of the whole property in the Bank, it being not sufficient that they should have deposited the value only of the portion taken by them (*Giles v. London, Chatham, and Dover Railway Company*, 1 D. & S. 406; *Underwood v. Bedford and Cambridge Railway Company*, 7 Jur. N. S. 941; *Dodson v. East Kent Railway Company*, 7 Jur. N. S. 941; *South Western Railway Company v. Coward*, 5 Rail. Cas. 703); but if the counter-notice be bad, the company may proceed on their notice to treat. (*Harvie v. South Devon Railway Company*, 32 L. T. N. S. 1.)

After notice to treat for a part, the surveyors of ^{Verbal} the parties met, and it was verbally agreed that ^{agreement} the company would take the whole, but there was ^{to take} no written counter-notice. On the company enter- ^{whole.} ing into possession of part only, under this section

Section 85. the Court restrained them, and compelled them to take the whole. (*Binney v. Hammersmith and City Railway Company*, 9 Jur. 773.)

Wrongful entry, rightfully continued. An entry, wrongfully made, does not preclude a continuance of possession when all has been done which was originally required to render the entry rightful. (*Willey v. South Eastern Railway Company*, 6 Rail. Cas. 100, 1 M. & G. 58.)

Abstraction of water. The abstraction of water from a stream for the purposes of an undertaking does not entitle a riparian owner below to require the company to proceed under section 18 and this section, but only entitles him to proceed under section 68, for the stream being injuriously affected (*Bush v. Trowbridge Waterworks Company*, L. R. 19 Eq. 291).

Diversion. But the diversion of the stream is taking and using it under this section, and before the diversion can be made the value of the stream must be ascertained, and secured to the owners of the land through which it passes. (*Ferrand v. Corporation of Bradford*, 21 Beav. 412.)

Insolvency of bank chosen by landowner. Where the deposit was made in a certain manner and in a certain bank, at the express request of the landowner, and the bank became insolvent, it was held that the loss must be borne by the vendor, the deposit, under the circumstances, being treated as payment, and not merely as security. (*Sir H. St. Paul v. Birmingham, &c., Railway Company*, 11 Hare, 310.)

Adverse claims. Where a company serves notice to treat upon the person in possession, and by his consent enters upon the land, though he neglects to give them particulars of his title and claim, and subsequently

other persons, of whose rights the company have Section 85.
 been ignorant, and who have not been served with
 notice to treat, move for an injunction restraining
 the company from remaining upon or using the
 land, the Court will, on the undertaking of the
 company to proceed under this section, refuse to
 interfere with their possession, and will adjourn
 the motion to Chambers to see if the claimants
 can make a title. (*Alston v. Eastern Counties Rail-
 way Company*, 3 W. R. 559.)

Some property was mortgaged to the plaintiffs, <sup>Mort-
gagees.</sup>
 who were not bound to receive their money until <sup>Pulling
down</sup>
 a future day. A railway company with knowledge ^{buildings.}
 treated with the mortgagor alone, and, not agree-
 ing, paid into Court to the credit of the mort-
 gagor the amount of compensation, but made no
 provision for the compensation to the mortgagees
 under section 114. The company then took pos-
 session, and commenced pulling down the building.
 The Court restrained the company from proceeding
 until the value of the mortgagees' interests had
 been ascertained, and paid or secured. (*Ranken v.
 The East and West India Docks and Birmingham
 Junction Railway Company*, 12 Beav. 298.)

A railway company requiring land paid a sum <sup>No notice
of inquiry</sup>
 into Court, and gave the usual bonds to the land- ^{given to}
 owner and to his mortgagees by deposit, and took <sup>mort-
gagees.</sup>
 possession of the land. The company proceeded
 with the inquiry into the amount of compensation
 as against the landowner, the mortgagees being
 aware, though without formal notice, of the in-
 quiry, but taking no part in it. The compensation
 awarded was less than the amount in Court, and

Section 85. was not sufficient to pay the debt due to the mortgagees; and a suit being instituted by them, the sum in Court was transferred to that suit, and ordered to stand as a security under this Act. On the cause being heard, it was held (reversing the decision of Stuart, V.-C.), that the mortgagees had no lien on the sum in Court. (*Martin v. London, Chatham, and Dover Railway Company*, L. R. 1 Ch. 501.)

Railway
Com-
panies
Act, 1867.

This section has been amended by section 36 of the Railway Companies Act, 1867, which is as follows :—

“Where, after the passing of this Act, a company exercise the powers conferred on the promoters of the undertaking by section 85 of the Lands Clauses Consolidation Act, 1845, the following provisions shall have effect :—

“(1.) The surveyor to be appointed, as in that section provided, shall be appointed by the Board of Trade instead of by two justices, and all the provisions of that Act relative to a surveyor appointed by two justices shall apply to a surveyor so appointed by the Board of Trade.

“(2.) The company shall give not less than seven days’ notice of their intention to apply to the Board of Trade for the appointment of a surveyor to any party interested in, or entitled to sell or convey the lands in question, and not consenting to the entry of the company.

“(3.) The valuation to be made by the surveyor so appointed shall include the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred

by the said section, as far as such damage and Section 85. injury are capable of estimation.

“(4.) The sureties to the bond to be given by the company under that section shall, in case the parties differ, instead of being approved of by two justices, be approved of by the Board of Trade after hearing the parties.”

Therefore, an entry subsequent to that Act cannot be made upon a previous valuation under this Act. And where a railway company had valued the land only under this section in 1865, and had entered after the 20th of August, 1867, on depositing the amount of the valuation, the entry was held to be irregular, and the company were restrained from continuing in possession of the land until the proper deposit had been made. (*Field v. Carnarvon and Llanberis Railway Company*, L. R. 5 Eq. 190.) Previous valuation under this Act.

A valuation of buildings by a surveyor who never entered them, is not a proper valuation within the meaning of this section. (*Cotter v. Metropolitan Railway Company*, 4 N. R. 454.) Valuation.

Where on the land being duly valued the amount is found to be larger than the sum deposited under this section, the company will be ordered to pay the difference into Court. (*Ashford v. London, Chatham, and Dover Railway Company*, 14 L. T. N. S. 787 ; *Ex parte London, Tilbury, and Southend Railway Company*, 1 W. R. 533.) Inadequate amount.

The deposit must include not only the value of the land, but the compensation for severance and injury, to which the landowner would be found entitled by a jury or on arbitration. (*Field v.* Compensation.)

Section 85. *Carnarvon and Llanberis Railway Company, L. R.*
5 Eq. 190.)

Condition. In the event of non-performance by the com-
Non-per-pany of the condition of the bond, the Court has
formance. jurisdiction under section 87 to order payment out
Payment of the deposit to the landowner on a petition pre-
out. sented by him for that purpose adversely to the
Petition. company. (*In re Mutlow's Estate, L. R. 10 C. D.*
131.)

Evidence Production by the company of the bond is
of satisfac-sufficient evidence that the conditions have been
tion of satisfied, and the money deposited under it will
conditions; be ordered to be paid out to the company. (*Re*
London and North Western Railway Company, 26
L. T. N. S. 687.)

Where the bond was conditioned to pay a person,
"her heirs, executors, administrators, or assigns, or
to deposit in the Bank, or otherwise for the benefit
of the parties," &c., as the case might require, under
the provisions contained in this Act, the introduc-
tion of the words "or otherwise," was held to be
authorised by the Act, and that the bond, there-
fore, complied with it (*Hoskins v. Phillips, 5 Rail.*
Cas. 560); so also the words "on demand," inserted
in the bond, render it informal. (*Poynter v. Great*
Northern Railway Company, 5 Rail. Cas. 196; *16*
Sim. 4; *2 Phil. 330*; *Langham v. Great Northern*
Railway Company, 5 Rail. Cas. 263; *1 D. & S.*
486.)

Tenants in A bond conditioned for payment to two tenants
common. in common, "their heirs, executors, administrators
or assigns," is irregular. (*Langham v. Great*
Northern Railway Company, 5 Rail. Cas. 263.)

Where he represented the entirety of an interest, Section 85. and the payment was to be for the owner, his executors, administrators or assigns, or into the Bank for his or their benefit, the bond was held to be regular. (*Willey v. South Eastern Railway Company*, 6 Rail. Cas. 100; 1 M. & G. 58.)

A condition for payment "at any time hereafter" is not good. (*Cotter v. Metropolitan Railway Company*, 4 N. R. 454.) "At any time hereafter."

A recital in the bond of the quantity of land required out of a certain larger piece is a sufficient description under this section. Description of land. (*Willey v. South Eastern Railway Company*, 6 Rail. Cas. 100; 1 M. & G. 58.)

Where possession had been taken under agreement, part of the purchase money having been paid into Court, and part remaining in the company's hand at £4 per cent., the tenant for life of the lands was entitled to have the whole invested, and the dividends paid to him, although all the parties had not executed the conveyance, in the absence of any improper conduct on his part relative to the execution. (*Re Wrey's Settlement*, 11 Jur. N. S. 298.) Tenant for life.

Section 80 applies whether the money is deposited under earlier or later sections. (*Ex parte Flower*, L. R. 1 Ch. 599; *Ex parte Morris*, L. R. 12 Eq. 418.) Costs. Lien.

But the Court will not order the costs to be paid out of the money deposited by the company under this section, and the money will be ordered to be paid out, whether the costs have been paid by the company or not, provided that the conditions of the bond have been fulfilled. (*In re Neath and* Costs not payable out of deposit under this section.

Section 85. *Brecon Railway Company*, L. R. 9 Ch. 263; *Ex parte Great Northern Railway Company*, 16 Sim. 169; 5 Rail. Cas. 269; *Ex parte Stevens*, 2 Phil. 772; *Ex parte Birmingham, &c., Railway Company*, 1 H. & M. 772; *In re London and Southampton Railway Extension Act*, 16 Sim. 169.)

Interest on sum recovered under s. 68. Under this section interest at £5 per cent. is payable on a sum recovered under section 68 for neglecting to issue a warrant to the sheriff within twenty-one days after notice, that the proprietor wishes to have the amount of compensation settled by a jury. (*In re Aberdare Railway Company*, 8 W. R. 603.)

Purchase concluded by contract. Where the purchase is subsequently concluded by contract the vendor must join in the petition for payment out of the sum deposited under this section, or a copy of the petition must be served upon him. (*Ex parte South Wales Railway Company*, 6 Rail. Cas. 151.)

Unpaid purchase-money. Lien on land. The deposit paid into Court is the price which the company pays for the privilege of taking immediate possession, and the object of this section is satisfied when the company have obtained possession and the ordinary remedies of a vendor in respect of his purchase moneys remain unaffected. (*Wing v. Tottenham and Hampstead Junction Railway Company*, L. R. 3 Ch. 740; *Walker v. Ware, Hadham, and Buntingford Railway Company*, L. R. 1 Eq. 195.)

Compensation. And the vendor has a lien for money payable to him as compensation for damage by severance and injury to his adjoining land, unless such compensation is the subject of a separate agreement between

himself and the company (*Walker v. Ware, Hadham, and Buntingford Railway Company*, L. R. 1 Eq. 195). He is not deprived of his lien by accepting a deposit in the names of trustees in lieu of the statutory deposit, if the purchase and compensation moneys exceed the deposited sum. (*Walker v. Ware, Hadham, and Buntingford Railway Company*, L. R. 1 Eq. 195.)

The Court will enforce the lien by sale, even though the railway has been made over the land and opened for public use. (*Walker v. Ware, Hadham, and Buntingford Railway Company*, L. R. 1 Eq. 195.)

Court will
enforce
lien.

Payment of Deposit and Cashier's Receipt.

LXXXVI. The money so to be deposited as last afore- said shall be paid into the Bank in the name and with the privity of the Accountant-General of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said Court; and upon such deposit being made, the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Section 86.

Where the landowner refused to accept the sum awarded to him, and to deliver an abstract of title and took proceedings at law unsuccessfully to set aside the award and other proceedings which were still pending to obtain the deposit paid in under

Refusal to
accept sum
awarded.
Applica-
tion for
deposit.

Section 86. section 85, the Court allowed the deposit to be paid out holding him not to be entitled to avail himself of the security provided in the deposit, and at the same time to repudiate the proceeding which was intended for his benefit. (*In re Fooks*, 2 M. & G. 357.)

Title of account. Money may be paid into the credit of “*Ex parte* the promoters of the undertaking, the account of the landowner.” (*Poynder v. Great Northern Railway Company*, 16 Sim. 3.)

*Investment, Application, and Payment out of
Deposit.*

Section 87. LXXXVII. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in Bank Annuities or government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said Court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

Where a railway company prior to entering Section 87.
upon lands has made a deposit in the Bank, and Payment to landowner.
given a bond under section 85, the Court has
jurisdiction under this section, in event of the non-
performance of the condition of the bond, to order
payment out of the deposit to the landowner, on
a petition presented by him for that purpose
adversely to the company. (*In re Mutlow's Estate*,
L. R. 10 C. D. 131.)

The money will be paid out without deduction Costs under ss. 80 & 82.
in respect of costs under sections 80 and 82. (See
those sections and also section 85 for cases.)

A railway company requiring land paid a sum Lien of mortgagages.
of money into Court, and gave the usual bonds to
the landowner and to his mortgagees by deposit,
and took possession of the land. The company
proceeded with the inquiry into the amount of
compensation as against the landowner, the mort-
gagees being aware, though without formal notice,
of the inquiry, but taking no part in it. The
compensation awarded was less than the amount
in Court, and was not sufficient to pay the debt
due to the mortgagees, and a suit being instituted
by them, the sum in Court was transferred to that
suit, and ordered to stand as a security under this
Act. On the cause being heard, it was held
(reversing the decision of V.-C. Stuart) that the
mortgagees had no lien on the sum in Court, and
also that they were not bound by the inquiry, and
were as equitable mortgagees entitled in default of
payment to an assignment by the company and
the owner, of the land comprised in their security,
and that the 124th section of this Act did not

Section 87. apply. (*Martin v. London and Blackwall Railway Company*, L. R. 1 Ch. 501.)

Refusal
of sum
awarded.
Applica-
tion for
deposit.

Where the landowner refused to accept the sum awarded and to deliver an abstract of title or to take any steps for conveying the land, and had taken proceedings at law to set aside the award on various grounds, but without success, and was at the time prosecuting an action against the company to recover the amount originally claimed by him, he was held not to be entitled to avail himself of the security provided by the Act in the deposit of the money, and at the same time to repudiate the proceeding, the benefit of the result of which it was the object of the Act thus to secure to him, and the deposit was paid out to the company. (*In re Charles Fooks*, 2 M. & G. 357.)

Suit to re-
strain from
entering.
Abandon-
ment of
purchase
by consent.

Where the landowner has commenced a suit against the company to restrain them from entering under section 85, and the company have subsequently with his concurrence abandoned the purchase, the abandonment not being by reason of inability of the company to complete, the deposit was paid out to them without any deduction for the landowner's costs of the suit. (*In re Birmingham, &c., Railway Company*, 1 H. & M. 772.)

Costs of
vendors
appearing
to consent.

Costs of vendors appearing to consent will not be allowed. (*In re Holman's Settlement*, W. N. 1877, 273.)

Payment into Bank when Office of Paymaster-General closed.

Section 88. LXXXVIII. If at any time the company be unable, by

reason of the closing of the office of the Accountant-General **Section 88.**
 of the Court of Chancery in *England* or the Court of
 Exchequer in *Ireland*, to obtain his authority in respect of
 the payment of any sum of money so authorised to be
 deposited in the Bank by way of security as aforesaid, it
 shall be lawful for the company to pay into the Bank, to
 the credit of such party or matter as the case may require
 (subject nevertheless to being dealt with as hereinafter
 provided, and not otherwise), such sum of money as the
 promoters of the undertaking shall, by some writing signed
 by their secretary or solicitors for the time being, addressed
 to the governor and company of the Bank in that behalf,
 request, and upon any such payment being made the
 cashier of the Bank shall give a certificate thereof; and in
 every such case within ten days after the reopening of
 the said Accountant-General's Office, the solicitor for the
 promoters of the undertaking shall there bespeak the
 direction for the payment of such sum into the name of
 the Accountant-General, and upon production of such
 direction at the Bank of England the money so previously
 paid in shall be placed to the credit of the said Accountant-
 General accordingly, and the receipt for the said payment
 be given to the party making the same in the usual way
 for the purpose of being filed at the Report Office.

*Penalty on Entry without complying with these
 Provisions. Recovery of Penalty.*

LXXXIX. If the promoters of the undertaking or any **Section 89.**
 of their contractors shall, except as aforesaid, wilfully enter
 upon and take possession of any lands which shall be
 required to be purchased or permanently used for the pur-
 poses of the special Act, without such consent as aforesaid,
 or without having made such payment for the benefit of
 the parties interested in the lands, or such deposit by way
 of security as aforesaid, the promoters of the undertaking

Section 89. shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the Superior Courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bond fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

“Wil-
fully.”

The word “wilfully” in this section implies an absence of honest belief on the part of the company in their right to enter. (*Steele v. Midland Railway Company*, 21 L. T. N. S. 387.)

*Decision of Justices as to Right of Entry not
conclusive.*

Section 90. XC. On the trial of any action for any such penalty as aforesaid, the decision of the justices under the provision

hereinbefore contained shall not be held conclusive as to Section 90.
the right of entry on any such lands by the promoters of
the undertaking.

*Proceedings in Case Owner refuse to give up
Possession.*

XCI. If in any case in which, according to the provi- Section 91.
sions of this or the special Act, or any Act incorporated
therewith, the promoters of the undertaking are authorised
to enter upon and take possession of any lands required for
the purposes of the undertaking, the owner or occupier of
any such lands or any other person refuse to give up the
possession thereof, or hinder the promoters of the under-
taking from entering upon or taking possession of the
same, it shall be lawful for the promoters of the under-
taking to issue their warrant to the sheriff to deliver pos-
session of the same to the person appointed in such warrant
to receive the same, and upon the receipt of such warrant
the sheriff shall deliver possession of any such lands
accordingly, and the costs accruing by reason of the issuing
and execution of such warrant, to be settled by the sheriff,
shall be paid by the person refusing to give possession, and
the amount of such costs shall be deducted and retained by
the promoters of the undertaking from the compensation,
if any, then payable by them to such party, or if no such
compensation be payable to such party, or if the same be
less than the amount of such costs, then such costs, or the
excess thereof beyond such compensation, if not paid on
demand, shall be levied by distress, and upon application
to any justice for that purpose he shall issue his warrant
accordingly.

Where a tenant had erected buildings upon land <sup>Injunc-
tion.</sup>
under an agreement that, if he should be required
by the landowner to give up possession before the
expiration of twenty years, he should be allowed a

Section 91. certain sum in proportion to the time unexpired, a company, having taken possession under this section, were restrained from pulling down the buildings until after having provided for his claim. (*Rogers v. Dock Company, Kingston-upon-Hull*, 5 N. R. 26.)

PART OF A HOUSE.

§ 92. Owners not to be compelled to sell Part of a House.

Owners not to be compelled to sell Part of a House.

Section 92. XCII. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house, or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

Entry into possession. On entry into possession on deposit and bond of part of a house, &c., see section 85.

Prior notice. Claim for part. A prior notice of claim for a certain sum in respect of a part for which a company has given notice to treat, and which sum the company has refused to pay, does not preclude the landowner from proceeding under this section (*Gardner v. Charing Cross Railway Company*, 2 J. & H. 248.)

Tunnel. Arches. Tunnelling under or arching over land is "taking" within the meaning of this section. (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 2 D. M. & G. 94; *Falkner v. Somerset and Dorset Railway Company*, L. R. 16 Eq. 458; *Furniss v. Midland Railway Company*, L. R. 6 Eq. 473.)

A provision in the special Act, that a line of ^{Section 92.} railway shall be carried over arches so as to afford ^{Provision in special Act.} communication between severed portions, is not inconsistent with this section, and, therefore, does not exclude its operation. (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 2 D. M. & G. 94.)

An easement is not part of a house within this ^{Easement.} section. (*Pinchin v. London and Blackwall Railway Company*, 5 D. M. & G. 851; 1 K. & J. 34.)

The three terms used here denote three different ^{Terms used in this section.} units which are protected by this section. There are three words used, "part only of any house, or other building, or manufactory." These must be considered as three things; that is to say, there may be a manufactory, which is not a building which cannot properly be described as a house, and a house includes more than mere buildings.

The word "house" has been held to mean, not "House." merely that which is a house in the ordinary sense, but a house both in the ordinary and legal sense; that is to say, it must be a house in the ordinary sense, but it may include more than a house in the ordinary sense, namely, that which is also a house in the legal sense; that is, the house and the curtilage and garden, and all that is necessary to the enjoyment of the house. And this "house" does not cease to be one unit because different parts of it are used for the purpose of different manufactures or businesses. (*Richards v. Swansea Improvement and Tramways Company*, L. R. 9 C. D. 425.)

And the word "house" under this section includes all that will pass under the term in a

Section 92. conveyance (see cases below), and is not confined to that which, though not structurally part of the building, is required for the residential purpose, but everything is "part of a house" which is an adjunct to the house for the purpose for which the house itself is used as a residence. (*St. Thomas's Hospital v. Charing Cross Railway Company*, 1 J. & H. 400; *Richards v. Swansea Improvement and Tramways Company*, L. R. 9 C. D. 425.)

Land. It does not include land which is not necessary for the convenient use and occupation of the house, but for the personal use and convenience of the owner and occupier. (*Steele v. Midland Railway Company*, L. R. 1 Ch. 475.)

"Building." "Building" and "house" are distinct in this way, that there may be a "building" which could not, either in the legal or in the ordinary sense, be said to be a "house;" and the word is added in this section as something different from that in order to include something not necessarily included in the meaning of the word "house." And the

"Manufactory." word "manufactory" seems to be inserted in order to provide for the case of a manufacture which is carried on on premises where there is no house or building, but yet it is a "manufactory" in the sense of its being premises appropriate for the carrying on of what may be called a "manufacture;" and the term might, it is thought, be applied to cases where several houses or buildings, though structurally distinct, are used for the purpose of one manufacture. (*Richards v. Swansea Improvement Tramways Company*, L. R. 9 C. D. 425.)

The owner and occupier of a house and six Section 92.
 acres of meadow land on the west side of a road Land not adjoining house.
 having a large family, and the ground which he
 occupied with his house being insufficient for the
 horses and cows, which he kept for their use,
 bought six and a quarter acres on the other side
 of the road, but of which the nearest point was
 distant 120 yards from his entrance gate. At such
 nearest point were a cow-house, loose box, and a
 cottage which was occupied by his grooms, because
 he had no accommodation for them on his side of
 the road. The six and a quarter acres were held
 not to be part of his house. (*Steele v. Midland
 Railway Company*, L. R. 1 Ch. 475.)

A small strip of ground at the extremity of the Gardens.
 garden (*Cole v. West End of London and Crystal
 Palace Railway Company*, 5 Jur. N. S. 1114), the
 farthest of a series of gardens separated by walls,
 but connected with one another and with the
 house by a gravel walk passing through the divid-
 ing walls (*Hewson v. London and South Western
 Railway Company*, 8 W. R. 467); so also a por-
 tion of land which, when the design was completed
 of a charitable institution which had been cove-
 nanted in the purchase deed of the land, for the
 charity, to be followed, would form part of a garden
 in front of the almshouses (*Governor v. Hamp-
 stead Junction Railway Company*, 1 D. & J. 446);
 also a portion of land which was intended to form
 the gardens of three newly erected houses, and
 which were in an unfinished and greatly dilapi-
 dated state (*Alexander v. Crystal Palace Rail-
 way Company*, 30 Beav. 556); part of an orchard

Section 92. and a corner of the garden (*King v. Wycombe Railway Company*, 28 Beav. 104); part of the garden of a hospital (*Governors of St. Thomas's Hospital v. Charing Cross Railway Company*, 1 T. & H. 400), have been held to be part of a house; but the remainder of a field, part of which has been added to the garden of the house, and the other part built over, is not part of a house. (*Pulling v. London, Chatham, and Dover Railway Company*, 23 Beav. 644; 3 D. J. & S. 661.)

Cottages
abutting
on back of
house.

In another case the landowner was the owner of a leasehold house in H. Street, and of five freehold cottages in B. Row, which ran parallel to H. Street, the yards at the back of the cottages abutting on the back yard and buildings held with the houses in H. Street. The landowner used the house in H. Street as a dwelling-house and shop, and the buildings behind it as a candle manufactory, candle store, bakehouse, bread store, and provision store. One of the cottages in B. Row was turned into a store house, and was made to communicate with the H. Street premises, and was used as a back entrance to them. A company gave notice to treat for the five cottages in B. Row and the yards behind them. The premises were held to be part of a house, and the company was compelled to take the whole. (*Richards v. Swansea Improvement and Tramways Company*, L. R. 9 C. D. 435.)

Back
entrance.

Curtilage.

A vacant piece of ground situated in front of a public-house not fenced off from the street, and separated from the house only by a narrow foot pavement, also without fence, which was ordinarily

used by the public as a thoroughfare, though Section 92.
 sometimes closed, and which piece of ground had
 for upwards of sixty years been treated as passing
 to the lessee by every demise of the public-house,
 and which was used by the customers of the public-
 house, and afforded the only approach for vehicles
 to the front door of the house, was held to be cur-
 tilage, and therefore part of a house. (*Marson v.*
London, Chatham, and Dover Railway Company,
 L. R. 6 Eq. 101.)

Two semi-detached villas were covered with one Unsub-
stantial
party wall.
 roof, and between the ceiling of the top floor rooms
 and this roof was a continuous space; the party
 wall, which was very unsubstantial, being only
 carried up to the ceiling. Otherwise there was no
 communication, except that the outside spouting
 and drains were continuous through the length of
 both villas. A company were allowed to take one
 villa without taking the other. (*Harvie v. South*
Devon Railway Company, 23 W. R. 202.)

Where a company gave notice to treat for Recreation
ground
separated
by road.
 a piece of land which was held under the same
 lease with a house and garden, from which
 it was separated by a road formerly private, but
 then public, and which was covenanted by the
 lessor to be left unbuilt upon, and to be used for
 purposes of recreation, the landowner was not en-
 titled to compel the company to purchase his
 house and garden. (*Ferguson v. London, Brighton,*
and South Coast Railway Company, 33 Beav. 103,
 3 D. J. & S. 653.)

Where a house and part of the garden are held Different
demises.
 under one lease, and the other part of the garden

Section 92. under another, the company must take the whole.
(*Macgregor v. Metropolitan Railway Company*, 14 L. T. N. S. 354.)

Right to obtain lease.

Land not at the time of notice to treat nor previously appurtenant to a house is not part of it. Therefore, where a lessee of a house has acquired a right to obtain at a future time a lease of land in the rear of his house for the purpose of extending his garden, but before the time arrived received notice to treat, the land was held not to form part of his house. (*Chambers v. London, Chatham, and Dover Railway Company*, 1 N. R. 517.)

Nursery and ornamental garden.

Where the owner and occupier of a dwelling-house, standing in a piece of ground $2\frac{1}{4}$ acres in extent, and surrounded by brick walls, used part of the land as an ornamental garden, and the other part for trade purposes, and a company proposed to take, without actually touching the house, the greenhouses and a part which had been planted and used for ornamental purposes, they were obliged to take the whole of the land. (*Salter v. Metropolitan District Railway Company*, L. R. 9 Eq. 432.)

Market garden.

A piece of land 2 acres 2 roods 20 perches in extent, and surrounded by a ring fence, had for many years been used for a market garden. For about twenty-five years a cottage of three rooms, nine feet in height, with two cellars suitable for storing fruit and vegetables, had been erected near to a road forming part of the boundary of the land for the purpose of occupation by the tenant of the garden. Through this piece of land a railway company drove a tunnel, which passed under one corner

of the cottage and divided the land into two portions, one of which was less than half an acre. The company were compelled to take only the part lying above the tunnel, the cottage, the piece of land lying between the cottage and the road, and also, if the owner required it, the severed portion, which was less than half an acre. (*Falkner v. Somerset and Dorset Railway Company*, L. R. 16 Eq. 458.) Section 92.

Cottages separated from a manufactory by a road, but which were the only warehouses in connection with the manufactory, have been held to be part of it. (*Spackman v. Great Western Railway Company*, 1 Jur. N. S. 790.) Cottages separated by road, used as warehouses.

Land included in the same wall with tinplate works, and used for the deposit of ashes, is "part of a manufactory," although the two portions are separated by a road over which a stranger has a right of way. (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 2 D. M. & G. 94.) Deposit of ashes.

A manufactory, sometimes worked or in part worked by water power, had a reservoir which was supplied by a goit, into which water was turned out of a natural river at some distance from the manufactory. At the point where the goit commenced there was a weir in the river, shuttles for the purpose of regulating the flow of water into the goit, and a millhouse for the occupation of a man whose duty it was to attend to the shuttles. A railway company having given notice to treat for land, including the weir, shuttles, and millhouse, and parts of the bed of the river (which was included in the lease of the manufactory), and the goit, they were held to be parts of the manufactory. Goit, shuttles and mill-house.

Section 92. (*Furniss v. Midland Railway Company*, L. R. 6 Eq. 473.)

Trade
fixtures.

With a manufactory the trade fixtures must be taken as part.

Manufac-
tory, what
is not.

Where land is employed for the purposes of a business not involving manufacture, but portions of it are used for auxiliary manufacturing processes, the whole is not a "manufactory" within this Act. Where, therefore, a dust contractor used a large piece of land for the purpose of collecting and disposing of the contents of dust heaps, one portion being used as a sorting place, another for the conversion of parts of the heaps into cement, and another for converting other parts into manure, it was held that under this Act the first-mentioned portion might be taken compulsorily without the rest. (*Reddin v. The Metropolitan Board of Works*, 4 D. F. & J. 532.)

Counter-
notice. De-
scription.

It is sufficient that the landowner should specify the premises which he requires the company to take, without stating whether he makes the claim, on the ground that they are a "house," or a "building," or a "manufactory." (*Richard v. Swansea Improvement and Tramways Company*, L. R. 9 C. D. 425.)

Verbal
agreement
to take
whole.

After notice to treat for a part, the surveyors of the parties met, and it was verbally agreed that the company would take the whole, there was no counter-notice. On the company entering into possession of part only under section 85, the Court restrained them, and compelled them to take the whole. (*Binney v. Hammersmith and City Railway Company*, 9 Jur. 773.)

The landowner cannot insist that some portion shall be taken as part of a house, and that another portion precisely in the same position shall not be taken. (*Pulling v. London, Chatham, and Dover Railway Company*, 33 Beav. 644; 3 D. F. & J. 661.)

Section 92.
Retention
by land-
owner of
other part.

A termor is entitled to the benefit of this section, though his option will not affect the owner of the fee. (*Pulling v. London, Chatham, and Dover Railway Company*, 33 Beav. 644; 3 D. F. & J. 661.)

Termor.

Persons under disability may, on being served with notice to treat, proceed under this section. (*Governors of St. Thomas's Hospital v. Charing Cross Railway Company*, 1 J. & H. 400.)

Charity
lands.

Upon the construction of the 18th, 21st, 23rd, and this section of this Act after a notice under the 18th section to take part of a manufactory, and a counter-notice under this section, it is not necessary that there should be a second formal notice by the company under the 18th section before summoning a jury under the 23rd section; but under the 21st section the company must give a reasonable opportunity to the landowner to agree with them before causing a jury to be summoned. It was held that the opportunity afforded by a subsequent proposal to treat for the purchase of the whole was such a reasonable notice as justified the company in giving a notice of summoning a jury. (*Schwinge v. London and Blackwall Railway Company*, 3 S. & G. 30.)

Notice of
summon-
ing jury to
assess
value of
whole.

Where a valid notice has been given to take part of a house or manufactory, and on that a valid

Section 92. counter-notice has been given to take the whole, the notice and counter-notice will be treated as constituting one notice for the purpose of enabling the jury to assess the value of the property forming the subject-matter of the notice and counter-notice. (*Pinchin v. London and Blackwall Railway Company*, 5 D. M. & G. 851.)

Change of plan. After receipt of counter-notice under this section, the company cannot change their plan and pass under the part comprised in their notice by a tunnel. (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 2 D. M. & G. 94.)

Necessity of land disputed. Where a company are empowered to take such lands as are delineated on the deposited plans and are necessary for the purpose of their works, and the landowner disputes the fact of necessity of a parcel of land, the question is for the jury, who are warranted in finding the necessity if it appear that, on the company proposing to take part of a close, the landowner insisted upon their taking the whole, and that the parcel in dispute is the residue of that close. (*Armitstead v. North Staffordshire Railway Company*, 16 Q. B. 526.)

Expiration of lease after counter-notice by lessees. Where the occupiers being lessees had given a counter-notice, and the company took no further proceedings until expiration of the lease, when the lessees, having remained in possession, they without serving any new notice proceeded under section 85, they were held to be at liberty to do so. (*South Western Railway Company v. Coward*, 5 Rail. Cas. 703.)

Withdrawal. After counter-notice and also after notice by the company of their intention to apply to the Board

of Trade for the appointment of a surveyor to de- Section 92.
 termine the value of the premises comprised in the
 notice to treat, and of the further lands which the
 landowner "can lawfully require and does require"
 the company to take, the company may withdraw
 from the notice to treat, there being no binding
 contract by them to purchase. (*Grierson v.*
Cheshire Lines Committee, L. R. 19 Eq. 83; *Ex*
parte Quicke, 13 W. R. 924; *Reg. v. London and*
South Western Railway Company, 12 Q. B. 775.)

Where there had been a litigation under this ^{Specific}
 section disposed of by a decree, and no question ^{perform-}
^{ance.}
 was raised by the company as to whether or not
 they were bound to fulfil the contract, and the
 decree had settled that they were to be the pur-
 chasers, they were not allowed afterwards to dis-
 pute the existence of a binding contract, but were
 compelled to do all that was necessary to give full
 effect to the decree. (*Marson v. London, Chat-*
ham, and Dover Railway Company, L. R. 6 Eq.
 101; *ibid.* 7 Eq. 546.)

INTERSECTED LANDS.

§ 93. Where Lands not in a Town and of less than Half an Acre are severed, Owner may require Sale or Company to Pay Costs of throwing it into his adjoining Land.

§ 94. If Expense of making Communications exceed Value of Land, Company may insist on Sale.

Where Lands not in a Town and of less than Half an Acre are severed, Owner may require Sale or Company to Pay Costs of throwing it into his adjoining Land.

Section 93. XCIII. If any lands not being situate in a town or built upon shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith ; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

"Town." As to what is a "town" within the meaning of this section, see cases under section 128.

Where the land is a garden or a part of the curtilage of a house, the landowner may under section S. 92. ^{Section 92.} 92 require the company to take the whole (see cases under that section).

A market garden, upon which was a small cottage used for the purposes of the garden, was held to be within section 92. ^{Market garden, with cottage. s. 92.} (*Falkner v. Somerset and Dorset Railway Company*, L. R. 16 Eq. 548.)

If Expense of making Communications exceed Value of Land, Company may insist on Sale.

XCIV. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication. ^{Section 94.}

The word "such" in this section refers to inter- "Such."

Section 94. sected lands generally, and not merely to those not being in a town.

Costs of inquiry.

Section 51 is not incorporated in this section, consequently where the company requiring to purchase the severed portion made no offer before the inquiry, and the jury found the land of less value than the cost of the accommodation works, the landowner was held not to be entitled to his costs of inquiry. (*Cobb v. Mid-Wales Railway Company*, L. R. 1 Q. B. 342.)

COPYHOLD LANDS.

§ 95. Enrolment and Effect of Conveyance. Fees.

§ 96. Enfranchisement.

§ 97. By Lord of Manor, or by Deed Poll in certain Cases.

§ 98. Apportionment of Rents and its Effect.

Enrolment and Effect of Conveyance. Fees.

XCV. Every conveyance to the promoters of the under- Section 95.
taking, of any lands which shall be of copyhold or cus-
tomary tenure, or of the nature thereof, shall be entered on
the rolls of the manor of which the same shall be held or
parcel; and on payment to the steward of such manor of
such fees as would be due to him on the surrender of the
same lands to the use of a purchaser thereof he shall
make such enrolment; and every such conveyance, when
so enrolled, shall have the like effect in respect of such
copyhold or customary lands, as if the same had been of
freehold tenure, nevertheless, until such lands shall have
been enfranchised by virtue of the powers hereinafter
contained, they shall continue subject to the same fines,
rents, heriots, and services as were theretofore payable and
of right accustomed.

The lord of the manor is not entitled to any ^{Fine as on} fine from the company as upon admittance. He ^{admit-}
must claim compensation under section 96 in re- ^{tance.}
spect of the loss of such fine. (*Ecclesiastical Com-*
missioners v. London and South Western Railway
Company, 2 W. R. 210.)

Section 95. And the steward of the manor is entitled only to the fee on surrender, but not to a fee on admittance. (*Cooper v. Norfolk Railway Company*, 3 Exch. 546.)

Tenant for
life and
remainder-
man.

The Copyhold Enfranchisement Acts 1852 and 1858 do not apply to purchases under this section. A tenant for life of the manor must allow the whole compensation money, including the compensation for the fine paid on the admittance of the company, and any additional compensation money paid in respect of a right claimed by him as tenant for life to enure for the benefit of the estate. (*Re Wilson*, 2 J. & H. 619; 10 W. R. 793.)

Enfranchisement.

Section 96. XCVI. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; and

in estimating such compensation the loss in respect of the Section 96. fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

*Conveyance by Lord of Manor, or in certain Cases
by Deed Poll.*

XCVII. Upon payment or tender of the compensation Section 97. so agreed upon or determined, or on deposit thereof in the Bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Apportionment of Rents and its Effect.

XCVIII. If any such copyhold or customary lands be Section 98. subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part,

Section 98. and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

COMMON AND WASTE LANDS.

- § 99. Mode of ascertaining and Payment of Compensation where Right to Soil belongs to Persons other than the Commoners.
- § 100. Conveyance, or in certain Cases Deed Poll, and its Effect.
- § 101. Mode of ascertaining Compensation due to Commoners.
- § 102. Meeting to be convened of Parties interested.
- § 103. Meeting by Vote to appoint a Committee.
- § 104. Agreement by Committee, and its Effect. Powers of Committee.
- § 105. In Default of Agreement, Compensation to be ascertained as in other Cases.
- § 106. Where no Committee appointed, Amount to be settled by Surveyor.
- § 107. Payment or Deposit of Money. Deed Poll and its Effect. Application of Money if paid into Court.

Mode of ascertaining and Payment of Compensation where Right to Soil belongs to Persons other than the Commoners.

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the

Section 99.

Section 99. right in the soil of which shall belong to the commoners ; and upon payment or deposit in the Bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Occupation without payment. If the company take possession of land over which there are rights of common, and construct their works, without first having paid compensation to the commoners, the latter may maintain an action against the company for the disturbance of their rights. (*Stoneham v. London, Brighton, and South Coast Railway Company*, L. R. 7 Q. B. 1.)

Costs. As to costs, see under section 107.

Conveyance by Lord of Manor, or Person entitled to Right to Soil, or in certain Cases Deed Poll, and its Effect.

Sect. 100. C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the Bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance ; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall

have been deposited as aforesaid shall vest absolutely in Sect. 100. the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

*Mode of ascertaining Compensation due to
Commoners.*

CI. The compensation to be paid with respect to any Sect. 101. such lands being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

This section and sections 102—106 are not Not imperative. imperative, so as to preclude a specific performance Specific performance. of an agreement entered into in a mode not provided by them. (*Bee v. Stafford and Uttoxeter Railway Company*, 23 W. R. 868.)

Meeting to be convened of Parties interested.

CII. It shall be lawful for the promoters of the under- Sect. 102. taking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the

Sect. 102. lands for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county, or in the respective counties, and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where any such meeting is intended to be held, or if there be no such church, some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel, or holden of a manor, a like notice shall be given to the lord of such manor.

Numbers
shifting
from time
to time.

Where the commoners are the freemen for the timebeing of a borough, see under section 104.

Meeting by Vote to appoint a Committee.

Sect. 103. CIII. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights: and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Agreement by Committee, and its Effect. Powers of Committee.

Sect. 104. CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction

of such commonable and other rights and all matters Sect. 101. relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interest, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the mis-application or non-application thereof.

Where land held by the corporation of a town Number varying. as common land in trust for the freemen of the borough as commoners in respect of a right for a certain time each year to turn upon the land one head of stock, the Court ordered the purchase money to be reinvested in other land to be held to the same uses, and until such reinvestment to be invested, and the dividends paid to the commoners, each receiving his share at the time when his right to turn his one head of stock began. (*Nash v. Coombs*, L. R. 6 Eq. 51.)

Where bye-laws made one provision for the exercise of rights of common by copyholders and freeholders, and another provision for the exercise Double claim, as copyholder and as occupier. of their rights by occupiers, copyholders and freeholders who were also occupiers were held entitled to a share in the compensation money in proportion only to their rights as copyholders or freeholders, and not in proportion to their rights as occupiers. (*Fox v. Amhurst*, L. R. 20 Eq. 403.)

*In Default of Agreement, Compensation to be
ascertained as in other Cases.*

Sect. 105. CV. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

*Where no Committee appointed, Amount to be
settled by Surveyor.*

Sect. 106. CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place; or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

*Payment or Deposit of Money. Deed Poll and
its Effect. Application of Money if paid into
Court.*

Sect. 107. CVII. Upon payment or tender to such committee or any three of them, or if there shall be no such committee, then upon deposit in the Bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the

lands in respects of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit. Sect. 107.

Out of a sum which had been paid into Court for compensation and costs, each commoner who in chambers established a claim to share in the funds was allowed three guineas for his costs. (*Waterlow v. Burt*, 18 W. R. 683.) Costs.

LANDS SUBJECT TO MORTGAGE.

- § 108. Power to Redeem, and Mode of so doing.
- § 109. In Default of Conveyance or good Title, Money to be paid into Court, and Estate and Interest of Mortgagee to vest by Deed Poll in Company.
- § 110. Mode of ascertaining Compensation where Mortgage Debt exceeds Value of Lands.
- § 111. On Refusal of Tender of Mortgage Debt to convey, or in Default of good Title, Deed Poll to be executed, and Money paid into Court.
- § 112. Mode of Settling Compensation where a Part only of Mortgaged Lands taken.
- § 113. In Default of Conveyance or good Title in above Case, Deed Poll to be executed, as in former Cases.
- § 114. Costs. Compensation in some Cases where Mortgage paid off before stipulated Time.

Power to Redeem, and Mode of so doing.

Sect. 108. CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affects such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and

interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

Sect. 108.

Where land, buildings, and fixtures were mortgaged, and the mortgagees had taken possession, a receiver in a suit for administration of the estate of the mortgagor, who was deceased, being appointed with the consent of the mortgagees to carry on the business, compensation awarded in respect of loss of trade profits was held to belong to the mortgagees, and not to the mortgagor. (*Ex parte Lambton*, L. R. 6 C. D. 36.)

A company took possession under section 85, giving the usual bonds to the landowner and his mortgagees. An inquiry, of which the mortgagees, though without formal notice, were aware, resulted

Loss of
trade
profits.

Mort-
gagees
without
notice of
inquiry as
to price.

Sect. 108. in compensation being awarded of less amount than the mortgage debt. The mortgagees were held to have no lien on the deposit, but not to be bound by the inquiry, and to be as equitable mortgagees entitled if their debt were not paid to an assignment of the land comprised in their mortgage. (*Martin v. London, Chatham, and Dover Railway Company*, L. R. 1 Ch. 501.)

In Default of Conveyance or good Title, Money to be paid into Court, and Estate and Interest of Mortgagee to vest by Deed Poll in Company.

Sect. 109. CIX. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

*Mode of ascertaining Compensation where Mortgage
Debt exceeds Value of Lands.*

CX. If any such mortgaged lands shall be of less value Sect. 110. than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Where the mortgagees were not bound by the inquiry fixing the price, and the sum awarded was less than their debt, they were held to be entitled in default of payment to an assignment from the company, and the landowner of the land comprised in their security. (*Martin v. London, Chatham, and Dover Railway Company*, L. R. 1 Ch. 501.) Mortgagees not bound by inquiry.

Refusal to Convey, &c.

CXI. If, upon such payment or tender as aforesaid being Sect. 111. made, any such mortgagee fail so to convey his interest in

Sect. 111. such mortgage or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the Bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

*Mode of Settling Compensation where only a Part
of Mortgaged Lands taken.*

Sect. 112. CXII. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall

be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Sect. 112.

Where part of lands subject to a settlement and to mortgages was taken, the Court ordered the money to be reinvested in lands to be held subject to the settlements and to the mortgages. (*Ex parte Peyton*, 4 W. R. 380.)

Mortgage continued upon lands on which money re-invested.

In Default of Conveyance or good Title in above Case, Deed Poll to be executed as in former Cases.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or

Sect. 113.

Sect. 113. as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank, in the manner provided by this Act in the case of moneys required to be deposited in such Bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Costs. Compensation in some Cases where Mortgage paid off before stipulated Time.

Sect. 114. CXIV. Provided always, that in any of the cases herein-

before provided with respect to lands subject to mortgage, Sect. 114. if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the reinvestment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

The Court will restrain the company from pulling down buildings before the compensation due under this section to a mortgagee has been paid. (*Ranken v. East and West India Docks and Birmingham Junction Railway Company*, 12 Beav. 305.) Injunction.

Sect. 114. It is doubtful whether by not opposing a petition for investment in Consols, and payment of the dividends to the tenant for life, the company waive the right to pay off a mortgagee under this section. (*Ex parte Peyton*, 4 W. R. 380.)

Waiver of
right to
pay off
mortgage.

RENT-CHARGES.

§ 115. Compensation for Release of Lands taken to be ascertained as in other Cases.

§ 116. Apportionment or Release where Part only of Lands subject taken.

§ 117. Deed Poll and Deposit, as before, in Default of Conveyance or good Title.

§ 118. Continuance of Charge upon Lands not taken. Deed creating or transferring such Charge.

Compensation for Release of Lands taken to be ascertained as in other Cases.

CXV. If any difference shall arise between the pro- Sect. 115.
motors of the undertaking and the party entitled to any
such charge upon any lands required to be taken for the
purposes of the special Act, respecting the consideration
to be paid for the release of such lands therefrom, or from
the portion thereof affecting the lands required for the
purposes of the special Act, the same shall be determined
as in other cases of disputed compensation.

Apportionment or Release where Part only of Lands subject taken.

CXVI. If part only of the lands charged with any such Sect. 116.
rent service, rent-charge, chief or other rent, payment, or
incumbrance, be required to be taken for the purposes of
the special Act, the apportionment of any such charge
may be settled by agreement between the party entitled

Sect. 116. to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands, so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

*Deed Poll and Deposit, as before, in Default of
Conveyance or good Title.*

Sect. 117. CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rent-charge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

*Continuance of Charge upon Lands not taken.
Deed creating or transferring such Charge.*

Sect. 118. CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they

were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all Courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Sect. 118.

LANDS SUBJECT TO LEASES.

§ 119. Apportionment of Rent: its Mode and Effect.

§ 120. Compensation to Tenants.

§ 121. Compensation to Tenants at Will from Year to Year, &c.,
how made and determined.

§ 122. Production of lease, where greater Interest claimed.

Apportionment of Rent: its Mode and Effect.

Sect. 119. CXIX. If any lands shall be comprised in a lease, for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which

shall not be required for the purposes of the special Act, Sect. 119.
 in the same manner as they would have done in case such
 part only of the land had been included in the lease.

Where the agreement for purchase contains a ^{Agree-}ment.
 stipulation for apportionment under this section,
 though in an action for specific performance the ^{Specific}perform-
 lessee is not entitled to a decree that the company ^{ance.}
 shall serve the lessor with notice to treat (which is
 necessary in order that a compulsory apportionment
 may be made), the Court will decree specific per-
 formance, and direct the lessee and the company
 to do all acts necessary to carry out the agreement.
 (*Williams v. East London Railway Company*, 18
 W. R. 159.)

Where only the lessee agrees with the company, ^{Agreement}
 the company must proceed compulsorily against ^{with lessee}
 the lessor. The lessee cannot be called upon to ^{alone.}
 obtain the lessor's consent to an apportionment.
 (*Slipper v. Tottenham and Hampstead Junction*
Railway Company, L. R. 4 Eq. 112.)

Costs of apportionment under this section, unless ^{Costs.}
 provided for by the agreement, must be borne by ^{s. 82.}
 the landowner, and do not come under section 82.
 (*Ex parte Buck*, 3 N. R. 110.)

An arbitrator may not apportion rent. (*Re Ware*, ^{Arbitrator.}
 9 Exch. 395 ; 7 Rail. Cas. 780.)

Compensation to Tenants.

CXX. Every such lessee as last aforesaid shall be entitled Sect. 120.
 to receive from the promoters of the undertaking com-
 pensation for the damage done to him in his tenancy by

Sect. 120. reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Power to resume for purposes of building. Where the lease contained a power to the lessor to resume the land at any time for purposes of building, he was held not to be entitled to do so after notice to treat, and the lessee was held to be entitled to compensation in respect of the whole lease. (*Johnson v. Edgware, Highgate, and London Railway Company*, 14 W. R. 416.)

Compensation to Tenants at Will, and from Year, to Year, &c., how made and determined.

Sect. 121. CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

The object of this section is to prevent claims Sect. 121.
 arising out of interests of short duration from being Object of section.
 heard by any tribunal other than that of justices,
 the Legislature thinking that claims of this kind,
 being from their nature for comparatively small
 amounts, need not go before either a jury or
 arbitrators, and that they might be satisfactorily
 and cheaply disposed of before justices. (*Queen v.*
Great Northern Railway Company, L. R. 2 Q. B. D.
 152.)

This section comes as a proviso upon the clauses Relation of this section to special Acts.
 which enact in general terms that compensation for
 any interest in land is to be assessed by a jury,
 and may, therefore, be treated as a proviso to and
 not inconsistent with the clauses in the special Acts,
 which enact in equally general terms that com-
 pensation for any interest in land is to be assessed
 by a jury. (*Reg. v. Lord Mayor of London*, 2 Q. B.
 392.)

This section applies only to cases where the When section applies.
 tenant has been required to give up possession.
 In other cases he must proceed under section 68.
 (*Reg. v. Stone*, L. R. 1 Q. B. 529; *Reg. v. Sheriff*
of Middlesex, 31 L. J. Q. B. 261; *Reg. v. Man-*
chester, Sheffield, and Lincolnshire Railway Com-
pany, 4 E. & B. 88.)

To an action for compensation under section 68, Plea to action for loss of support to house.
 and for trespass on the ground of damage by
 reason of loss of support through the pulling
 down of an adjoining house, it is a good plea that
 the plaintiff is a tenant from year to year. (*Knapp*
v. London, Chatham, and Dover Railway Company,
 11 W. R. 890.)

Sect. 121. Where the company give a six months' notice of their intention to take lands, and, at the time of the notice being given, more, but at its expiration less, than one year of the tenancy remains, the tenant's interest is calculated from the time when the notice is given. (*Tyson v. Mayor of London*, L. R. 7 C. P. 18.)

From what time interest to be calculated. Tenants of a term which at the date of the company taking possession has less than one year unexpired are within this section. (*Reg. v. Great Northern Railway Company*, L. R. 2 Q. B. D. 151.)

Residue of term having less than one year to run. A tenant who is within this section cannot after notice to treat obtain from his lessor a longer term. (*Ex parte Edwards*, L. R. 12 Eq. 389.)

Greater interest created after notice. A schoolmaster who was allowed a house, and was removable by the governors of the school on three months' notice, was held to come within this section. (*Reg. v. Manchester, Sheffield, and Lincolnshire Railway Company*, 4 E. & B. 88.)

School-master's house. An agreement to let to a tenant for so long during an unexpired term of ten years as he shall continue to pay the rent, constitutes a tenancy for the remainder of the term. (*In re King's Leasehold Estate*, 21 W. R. 881.)

Lease for as long as tenant shall pay rent. A written agreement void at law, but in equity equivalent to a lease, will prevent a tenant from coming within this section. (*Sweetman v. Metropolitan Railway Company*, 1 H. & M. 543.)

Agreement void at law, but good in equity. Under a local Act incorporating this section, the company in November, 1865, served on the person who held certain premises as yearly tenant a notice stating their intention to take the premises, and requiring possession in six months. In fact, posses-

Compensation.—Six months, possession not taken until twelve months.

sion was not taken by the company till 1867, and ^{Sect. 121.} the tenant meanwhile remained in possession, and continued to carry on his business upon the premises. In January, 1867, the company took an assignment of the interest of the tenant's landlord (the lessee for a term of the premises), but no landlord's notice to quit was ever given to the tenant. In February, 1867, the company demanded immediate possession of the tenant's premises, declining to pay any compensation, and upon refusal obtained possession under a provision of their local Act, which however required that no such possession should be taken until payment or deposit of compensation money should have been made. The tenant having sued them in trespass, it was held (affirming the decision of the Court of Exchequer) that he was entitled to compensation, and that the company had therefore not complied with the provisions of their local Act, and were liable. (*Cranwell v. The Mayor, Commonalty, and Citizens of London, and Others*, L. R. 5 Exch. 284.)

In June, 1865, a railway company served on a tenant from year to year the usual notice to treat, ^{Depreciation of trade.} and a notice as required by their Act of their intention at the expiration of six months to enter and take the premises. The tenant sent in his particulars of claim to the company, but they did nothing further till 1868. The tenant in the meantime continued to carry on his business of a publican on the premises. In March, 1868, a summons was served by the company on the tenant, and in April the question of the compensation to be paid by the company to him for his interest in

Sect. 121. the premises was heard before a metropolitan police magistrate under this section. The tenant, *inter alia*, claimed compensation for the depreciation in the value of such interest which had taken place in the interval since the expiration of the six months, by reason of the execution of the company's works, the custom of the public-house having been greatly reduced by the pulling down of the neighbouring houses taken under the company's statutory powers. The magistrate having refused to assess this item of compensation, on a rule to compel him to do so, it was held that this depreciation was not the subject of compensation, and the claim had been rightly rejected. (*Queen v. Vaughan*, L. R. 4 Q. B. 190.)

Notice
waived. A tenant is entitled to compensation for loss incurred between the giving of a six months' notice and notice of abandonment by the company. (*Reg. v. Justices of Lancashire*, 4 W. R. 643.)

Order for
payment. A summons under this section is not a complaint upon which the justices have authority to make an order for payment of money under 11 & 12 Vict. c. 43, s. 1, and therefore the time within which it may be heard is not limited by section 11 of that Act to six months from the date of the notice to treat. (*Reg. v. Hannay*, 23 W. R. 164.)

Not bound
to put de-
termina-
tion in
writing. The justices are not bound to put their determination in writing. (*In re Boyce Combe and London, Chatham, and Dover Railway Company*, 11 W. R. 441.)

Interest in
case of
yearly
tenancies. After a verdict assessing compensation payable to landowners entitled in fee subject to yearly tenancies, interest was held to be payable upon

the amount from the date of the verdict, although Sect. 121.
possession was not actually taken until after the
expiration of the yearly tenancies. (*In re Eccles-*
hill Local Board, L. R. 13 C. D. 365.)

*Production of Lease, where greater Interest claimed
than Tenancy from Year to Year, &c.*

CXXII. If any party, having a greater interest than as Sect. 122.
tenant at will, claim compensation in respect of any un-
expired term or interest under any lease or grant of any
such lands, the promoters of the undertaking may require
such party to produce the lease or grant in respect of which
such claim shall be made, or the best evidence thereof in
his power; and if, after demand made in writing by the
promoters of the undertaking, such lease or grant, or such
best evidence thereof, be not produced within twenty-one
days, the party so claiming compensation shall be con-
sidered as a tenant holding only from year to year, and be
entitled to compensation accordingly.

TIME FOR EXERCISE OF COMPULSORY POWERS.

Sect. 123. CXXIII. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed, not after the expiration of three years from the passing of the special Act.

To what this section applies. The powers referred to in this section are powers given to the several promoters of the several special Acts with which this Act may be incorporated, and not several powers given to the promoters of each special Act. And this section refers to the powers given by the Act for the purchase and taking of land, and not to those given for carrying into effect purchases already made. (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Company*, 9 Hare, 436.)

Right to retain lands already acquired. The fact that a railway company has by lapse of time lost the powers which the Legislature has given them to take lands does not deprive them of the right to hold lands which they acquired during the existence of those powers, nor does it release them from the obligations contracted with reference to such lands. (*Webb v. Direct London and Portsmouth Railway Company*, 9 Hare, 129.)

Notice to treat is a sufficient exercise of the compulsory powers, and, consequently, if it be given before the expiration of three years, the company may after that time enter upon the land under section 85. (*Salisbury v. Great Northern Railway Company*, 17 Q. B. 840.)

Sect. 123.
Notice
before ex-
piration
of time,
entry un-
der s. 85,
after.

So also continuance of possession after the three years where entry under section 85 has been made within the three years is not unlawful. (*Worsley v. South Devon Railway Company*, 16 Q. B. 539; *Armistead v. North Staffordshire Railway Company*, 16 Q. B. 526.)

And where the notice to treat has been given within the three years, the company after that time may proceed to have the price ascertained by a jury. (*Reg. v. Birmingham and Oxford Junction Railway Company*, 15 Q. B. 634; and see *Brocklebank v. Whitehaven Junction Railway Company*, 15 Sim. 632.)

Jury
summoned
after.

INTERESTS IN LANDS BY MISTAKE OMITTED TO BE PURCHASED.

§ 124. Power to take by Agreement or Compulsorily.

§ 125. Principle upon which Compensation determined.

§ 126. Costs.

Power to take by Agreement or Compulsorily.

Sect. 124. CXXIV. If, at any time after the promoters of the undertaking shall have entered upon any lands which, under the provisions of this or the special Act, or any Act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed, then, within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties

respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as, according to the provisions of this Act, the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit. Sect. 124.

Where a company serves notice to treat upon the person in possession, and by his consent enters upon the land, though he neglects to give them particulars of his title and claim, and subsequently other persons, of whose rights the company have been ignorant, and who have not been served with notice to treat, move for an injunction restraining the company from remaining upon or using the land, the Court will, on the undertaking of the company to proceed under section 85, refuse to interfere with their possession, and will adjourn the motion to Chambers to see if the claimant can make a title. (*Alston v. Eastern Counties Railway*, 3 W. R. 559.) Adverse
claims.

This section was held not to apply where a company had deposited a sum in Court under section 85, giving bonds to a landowner and his mortgagees, and the latter, being aware of the inquiry as to the value, stood aloof and took no part in it, the sum awarded being less than the amount of their mortgage and less than the deposit in Court. Applica-
tion of
section.

Sect. 124. (*Martin v. London, Chatham, and Dover Railway Company*, L. R. 1 Ch. 501.)

Ejectment
by mort-
gagee.

A company entered upon lands of which the mortgagor had been in possession, and although the purchase money was not paid to him, the parties were treating for an arrangement, and the entry was with the consent of the mortgagor. The mortgage was not known to the company until the mortgagee's attorney, thirteen months later, sent a letter to the company asserting the mortgagee's rights. A correspondence ensued, in which the mortgagee gave no particulars of his title. The company did not dispute his title, but asked for delay, as their legal advisers were absent from London. Two months later the mortgagee brought ejectment, which was refused on the ground that the title, not being in dispute, the company, under this section, had a right of possession for six months after notice of the mortgagee's claim. (*Jolly v. Wimbledon and Dorking Railway Company*, 1 B. & S. 807.)

Claim several
years
after tak-
ing, where
company
aware of
claim on
taking
land.

Where a company take a conveyance of a piece of land, stating that a small portion belongs to a third party, who neither knows its position nor extent, and he claims it several years afterwards, this section does not apply. (*Stretton v. Great Western and Brentford Railway Company*, L. R. 5 Ch. 751.)

Principle on which Compensation determined.

Sect. 125. CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or

arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed. Sect. 125.

Costs.

CXXXVI. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the Court in which such litigation took place. Sect. 126.

“Full costs and expenses” here means costs as between solicitor and client. “Full costs and ex-
penses.” (*Hyde v. Mayor, &c.*, *Manchester*, 12 C. B. 474.)

SUPERFLUOUS LANDS.

- § 127. To be sold or to vest in adjoining Owners.
- § 128. To be offered first to Owner from whom they were originally taken.
- § 129. Time within which Offer to be accepted.
- § 130. Price to be settled by Agreement or Arbitration.
- § 131. Conveyance.
- § 132. Effect of Word "Grant" in Conveyances from the Company.

To be sold or to vest in adjoining Owners.

Sect. 127. CXXVII. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special Act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

**Applica-
tion of
section.** This and the following sections are not restricted to cases where land has been acquired by a company under what are called its compulsory powers.

**Object of
section.** The object of the section is as applicable to lands acquired by negotiation, where the special Act confers a power so to take them, as to lands which are not so acquired.

**Land taken
by agree-
ment.** Where a company are empowered to take lands

compulsorily, no distinction can be drawn between Sect. 127. those lands which they take, not by having recourse to their compulsory powers, but by agreement, the owner knowing that if he does not agree he will be forced to part with them, and those lands which are taken without any agreement, the owner opposing and obstructing every proceeding of the company. (*Hooper v. Bourne*, L. R. 22 Q. B. D. 339; affirmed W. N. 1880, 17.)

This section does not apply where the railway is Abandonment. abandoned. (*Smith v. Smith*, L. R. 3 Ex. 282.)

The rule in this section extends to lands of which Reversion. the company have acquired the reversion subject to a term. (*Moody v. Corbett*, L. R. 1 Q. B. 510.)

Lands within section 15 of the Metropolitan Lands within s. 15 of Metropolitan District Railway Act, 1868. District Railway Act, 1868, are within this section. (*Tomlin v. Budd*, 22 W. R. 529.)

A railway company, unless specially empowered Railway Act, 1868. to do so, cannot, whether for value or otherwise, alienate for any purposes except the purposes of Alienation of lands not superfluous. the Act any portion of the land not being superfluous land within this section, and not being land taken for extraordinary purposes within section 45 of the Railway Clauses Act, 1845, nor any easement over the same.

So where a railway station is built upon arches, Land under arches. the part of the land under the arches is not superfluous land, and a right of way cannot be granted Right of way. over it. (*Mulliner v. Midland Railway Company*, L. R. 11 C. D. 611.)

Land over arches is not within this section. (*In re Metropolitan District Railway Company and Cosh*, W. N. 1880, 17.) Land over arches.

Sect. 127.

A portion
may be
treated as
superflu-
ous.

It appears that when a piece of land taken as a whole is wanted for the purposes of a railway, discussion will not be allowed as to whether a portion is superfluous. (*Betts v. Great Eastern Railway Company*, 3 Ex. D. 187; affirmed on appeal, W. N. 1879, 163.)

Insuffi-
ciency of
traffic, or
want of
funds.

Land does not become "superfluous" merely because from insufficiency of traffic or from want of funds the company cannot immediately apply it to the purposes of the Act, although it is in the meanwhile let out to yearly tenants, and applied to purposes for which it is in its then condition suitable. (*Betts v. Great Eastern Railway Company*, L. R. 3 Ex. D. 182.)

The case of *City of Glasgow Union Railway Company v. Caledonian Railway Company*, L. R. 2 Sc. App. 160, might at first sight seem to have some application to this section, but on this point see the remarks of Cotton, L.J., in *Hooper v. Bourne*, at p. 286 of L. R. 3 Q. B. D.; affirmed W. N. 1880, 17.

Let to
servants of
company.

In the case of *May v. Great Western Railway Company*, L. R. 7 Q. B. 364, 7 H. L. 283, it appeared that a portion of the land there decided to be superfluous land had been let at rents to the servants of the company or others, and had been upon similar terms cultivated by them, but it was originally acquired for the temporary purpose only of depositing spoil thereon, and, as was said by Lord Hatherley, "It had been used for depositing spoil, and had performed its duty, and was clearly land which was not required for the purpose of the railway. It was used for the temporary purpose,

and only for the temporary purpose of depositing ^{Sect. 127.} spoil upon it. At the end of ten years it was found as a plot of ground upon which spoil had ceased any longer to be deposited, and was useless, unprofitable, having served the purpose for which it was taken, but having no longer, according to the case, any purpose to serve in connection with the railway. In point of fact it never was acquired by the company, and never was intended by the company to be acquired as to the whole of it for any permanent purpose." As was remarked in a later case (*Hooper v. Bourne*, L. R. 2 Q. B. D. 344; affirmed W. N. 1880, 17), if the case had disclosed any facts showing that there were purposes remaining unsatisfied, the retention of the land would have been considered justifiable. The reasoning of all the judges in the Court of Queen's Bench is strong to the same effect.

The *ratio decidendi* in *May's Case* was that the land in question had been acquired by the railway company for the temporary purpose only, which purpose had been fulfilled within the time prescribed for the sale of superfluous lands, and that neither at the expiration of that time nor at any time had the land been required for any other purpose in connection with the railway.

The expression "required" for the purposes ^{"Re-quired."} thereof includes at least two classes, viz., lands actually in use on the day with respect to which the matter is to be decided, and also lands which are on that day within a definite and ascertained time intended to be used for the purposes of the railway company. But there is also a third class

Sect. 137. of cases where land may properly be said to be "required" for the purpose of the undertaking, that is to say, where at the expiration of the period the land, although not in actual use, will, owing to the growing traffic of the line, be wanted for the railway within a reasonable time, which it is not possible to specify. It is not to be taken for granted that any land is "required" for the purposes of the undertaking, merely because some person may be found to say that very likely at some time it may be wanted; but if persons of competent skill can *bond fide* say that although the land is not at the moment wanted for the railway, and although it is not possible to fix a time when it will be wanted, yet at some future time, perhaps five or six years, it assuredly will be wanted, in that case land is to be taken to be "required" for the purposes of the undertaking. (*Hooper v. Great Western Railway Company*, L. R. 2 Q. B. D. 339.)

Unex-
pected use. Land will vest in adjoining owners at the end of the limited period, although at some subsequent time a new railway is unexpectedly constructed, forming a junction with the old railway, which would have rendered the retention of the land by the old company desirable for the purposes of their undertaking, for if this was allowed to be done there would be a difficulty in saying that any piece of land would not at some future time be required. (*Hooper v. Great Western Railway Company*, L. R. 2 Q. B. D. 339.)

Time. It has been laid down that, for the purposes of this section, the point of time to be considered is

the last day of the ten years, and that if land is not then required by the company it is superfluous, although at a subsequent time it may be required for the purposes of the undertaking. (*Great Western Railway Company v. May*, L. R. 7 H. L. 294.) Sect. 127.

When subsequently to the vesting of the right to the superfluous land an Act is passed extending the time limited for the sale by the former Act, such rights will not be divested. (*Moody v. Corbett*, L. R. 1 Q. B. 510.) Right not diverted by Act extending time subsequently to vesting.

In the case of *Moody v. Corbett*, L. R. 1 Q. B. 510, it was laid down that where there are several adjoining properties in contact with the superfluous land, it is to be divided among the owners of the adjoining properties in proportion to the frontage of each (meaning by frontage what would be the length of the line of contact of each property if the line were made straight from the point of intersection of the boundaries on one side to the point of intersection of the boundaries on the other side). But in the later case of *Smith v. Smith*, L. R. 3 Ex. 282, where the land claimed as superfluous was a long strip, crossed at right angles by the intended line, and the plaintiff was owner of the adjoining land on one side of the strip, the defendant of that on the other, it was decided that the plaintiff was entitled to so much as lay on his side of the line drawn from the point where his land and the defendant's and the end of the strip met along the length of the strip, to a similar point at the other end. Principle of division between adjoining owners.

Where a company having purchased land for the Directors' statement.

Sect. 127. purposes of its railway, after using some of the land sells the rest, calling it in the advertisement and particulars "surplus land," this form of sale must be deemed a declaration that the land sold is "superfluous land" within the meaning of this section. Though the directors of a railway company are not compelled to sell their superfluous land within ten years, yet if within that time they make the attempt to sell, the right of an adjoining owner to claim the benefit of pre-emption at once arises.

To whom
first
offered.

Such land must under section 128 of the statute be first offered to persons whose lands or some of them have been taken in virtue of the company's Act, or who are "owners of the land adjoining." (*Directors, &c., of London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610.)

Action for
pre-emp-
tion before
time
expired.

A railway company bought from a person a small piece of land, the whole of which, according to their original plan, would have been covered by the embankment of the railway. Being obliged to provide a communication between the severed lands of another landowner, the company altered their levels so as to narrow the embankment, and leave unoccupied a strip of the land purchased. This strip they turned into a road for the use of another landowner. The vendor of the land thereupon, before the period named for the sale of superfluous lands had arrived, filed his bill to enforce a right of pre-emption as to the strip, and it was held (reversing the decision of *Stuart, V.-C.*) that the land was not superfluous land; that the making

accommodation works, which the company was ^{Sect. 127.} compellable to make, was one of the purposes of their Acts, and that the landowner, therefore, had no title to relief.

But it was held (agreeing with the Court below) that the suit was not premature, for that if the making of the road had not been one of the purposes of the Acts, the permanent dedication to the land for that purpose would have established the land to be superfluous land, so as to entitle the plaintiff at once to enforce his right of pre-emption. (*Lord Beauchamp v. Great Western Railway Company*, L. R. 3 Ch. 745.)

In an action of ejectment by an adjoining owner to recover superfluous land not sold or disposed of within ten years, particulars of sale of the land in question, prepared by the solicitor of the company, were admitted as evidence at the trial, but no express authority to the solicitor to prepare the particulars of sale was proved. The particulars in the absence of such proof were not admitted as evidence. (*Moody v. London, Brighton, and South Coast Railway Company*, 9 W. R. 780.)

Particulars
of sale not
evidence in
absence of
authority
to prepare
them.

To be offered first to Owner from whom they were originally taken.

CXXVIII. Before the promoters of the undertaking ^{Sect. 128.} dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be

Sect. 128. found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

Meaning
of word
"town."

The word "town" here means a space on which the dwelling-houses are collected so near to each other that they may be said to be continuous, and an open space occupied as a mere accessory to the convenience of the dwelling-houses would probably be considered as in a "town." (*Elliott v. South Devon Railway Company*, 5 Rail. Cas. 500.)

Metropo-
litan
District
Railway
Company,
1868.

Lands within section 15 of the Metropolitan District Railway Act, 1868, are not within this section, but are within section 127. (*Tomlin v. Budd*, 22 W. R. 529.)

"Dispose
of."

The words "dispose of" refer to a transfer to another person, not to an application of the land to a new purpose, nor does the abandonment of the undertaking give a right to a reconveyance. (*Astley v. Manchester, Sheffield, and Lincolnshire Railway Company*, 2 D. & J. 463.)

As to what are superfluous lands, see section 127.

What
lands are
not in a
town, or
building
land.

Lands situated near a railway station and not continuously built upon are not within a "town," or used for building purposes, within the meaning of this section. Nor are lands which a company have acquired, but not used for the purposes of their undertaking, merely through being capable

of being afterwards used for building purposes. Sect. 128.
 (*London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610.)

Where a wall has been built between the company's land and that of an adjoining owner, and it is agreed that the land on which it is built shall belong to both, the landowner and not the company is the adjoining owner under this section. (*London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610.)

An adjoining owner has a right to make a claim, and an inquiry may be directed as to whether any other person has a better right. (*London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610.)

A railway company bought from a landowner a small piece of land, the whole of which, according to their original plan, would have been covered by the embankment of the railway. Being obliged to provide a communication between the severed lands of another landowner, the company altered their levels so as to narrow the embankment, and leave unoccupied a strip of the land. This strip they turned into a road for the use of another landowner. The landowner thereupon, before the period named for the sale of superfluous lands had arrived, filed his bill to enforce a right of pre-emption as to the strip. It was held (reversing the decision of Stuart, V.-C.) that the land was not superfluous land; that the making accommodation works, which the company was compellable to make, was one of the purposes of their Acts, and that the landowner, therefore, had no title to relief. But it was held

Sect. 128. (agreeing with the Court below) that the suit was not premature, for that if the making of the road had not been one of the purposes of the Acts, the permanent dedication of the land for that purpose would have established the land to be superfluous land, so as to entitle the landowner at once to enforce his right of pre-emption. (*Lord Beauchamp v. Great Western Railway Company*, L. R. 3 Ch. 745.)

Right to bring action for pre-emption before the ten years are expired. To come within the above term, the land must be sold as building land, or let on building leases, and actually laid out for building. (*Coventry v. London, Brighton, and South Coast Railway Company*, L. R. 5 Eq. 104.)

Building land. If a railway company before the expiration of the ten years limited by section 127 have conveyed superfluous land to a third person under the impression that it was within a town, the adjoining owners may at once exercise their right of pre-emption. (*Carington v. Wycombe Railway Company*, L. R. 3 Ch. 37.)

Land sold to other persons before ten years expired. A private road of which the adjoining owner has the exclusive use, does not preclude his right under this section. (*Coventry v. London, Brighton, and South Coast Railway Company*, L. R. 5 Eq. 104.)

Private road. A lessee is an "adjoining owner." (*Coventry v. London, Brighton, and South Coast Railway Company*, L. R. 5 Eq. 104.)

Lessee. Where the price of superfluous lands in respect of which a landowner exercises his right of pre-emption is determined by arbitration, the

Price fixed by arbitration. the question of costs is to be decided in the same way as if the landowner had bought the land of another

Costs.

company ; consequently each party must pay his own costs. *(In re Eyre's Trusts, W. N. 1869, 76.)* Sect. 128.

Where a purchaser from the company of superfluous land, in conditions for sale to a third person, stipulated that that person should admit the sale by the company to have been carried out in accordance with the provisions of this section, and the usual stipulation was included as to forfeiture of the deposit, in case such third person should fail to comply with the terms of the agreement, the condition was held to be binding and the deposit to be forfeited. *(Best v. Hamand, L. R. 12 C. D. 1.)* Conditions of sale.

Time within which Offer to be accepted.

CXXIX. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease ; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all Courts be sufficient evidence of the facts therein stated. Sect. 129.

Price to be Settled by Agreement or Arbitration.

Sect. 130. CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Arbitra-
tion
clauses.

It appears that the arbitration clauses of this Act do not apply to arbitrations under this section. (*Jones v. South Staffordshire Railway Company*, 19 L. T. N. S. 603.)

Manda-
mus.

Where the company refused to take up the award, the Court refused a *mandamus* to compel them to do so. (*Jones v. South Staffordshire Railway Company*, 19 L. T. N. S. 603.)

Conveyance.

Sect. 131. CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser

of any such lands for the purchase money in such receipt Sect. 131.
expressed to be received.

*Effect of Word "Grant" in Conveyances from the
Company.*

CXXXII. In every conveyance of lands to be made by Sect. 132.
the promoters of the undertaking under this or the special
Act the word "grant" shall operate as express covenants
by the promoters of the undertaking, for themselves and
their successors, or for themselves, their heirs, executors,
administrators, and assigns as the case may be, with the
respective grantees therein named, and the successors,
heirs, executors, administrators, and assigns of such grantees,
according to the quality or nature of such grants, and of
the estate or interest therein expressed to be thereby con-
veyed, as follows, except so far as the same shall be re-
strained or limited by express words contained in any such
conveyance; (that is to say,)

A covenant that, notwithstanding any act or default
done by the promoters of the undertaking, they
were at the time of the execution of such convey-
ance seised or possessed of the lands or premises
thereby granted for an indefeasible estate of inherit-
ance in fee simple, free from all incumbrances done
or occasioned by them, or otherwise for such estate
or interest as therein expressed to be thereby
granted, free from incumbrances done or occasioned
by them :

A covenant that the grantee of such lands, his heirs,
successors, executors, administrators, and assigns,
(as the case may be,) shall quietly enjoy the same
against the promoters of the undertaking, and their
successors, and all other persons claiming under
them, and be indemnified and saved harmless by
the promoters of the undertaking and their suc-
cessors from all incumbrances created by the
promoters of the undertaking :

Sect. 132.

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be,) by the promoters of the undertaking, or their successors, and all other persons claiming under them :

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

LAND TAX AND POOR RATE.

Deficiency to be made Good.

CXXXIII. And be it enacted, that if the promoters of ^{Sect. 133} the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor rate, be liable to make good the deficiency in the several assessments for land tax and poor rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

The fact, that works when completed will not <sup>Not assess-
able when
completed.</sup> be assessable to poor rates, does not prevent the application of this section. (*Stratton v. Metropolitan Board of Works*, L. R. 10 C. P. 76.)

Though the poor rate accounts have been audited <sup>Poor rate
accounts
opened.</sup> and closed for each year, the deficiency for several

Sect. 133. years may be recovered. (*Stratton v. Metropolitan Board of Works*, L. R. 10 C. P. 76.)

If works subject of beneficial occupation. This section applies if part, or the whole of the works, will be the subject of beneficial occupation, but it is doubtful whether, if they will not be, this section will apply. (*Wheeler v. Metropolitan Board of Works*, L. R. 4 Ex. 203.)

Public bodies. Persons intrusted with the construction of public works are within this section. (*Wheeler v. Metropolitan Board of Works*, L. R. 4 Ex. 303.)

Promoters' liability. Promoters are not liable to be rated to the poor in respect of such lands. (*Mayor of London v. St. Andrew, Holborn*, L. R. 2 C. P. 574.)

SERVICES OF PROCEEDINGS UPON
COMPANY.

Notices, Writs, &c.

CXXXIV. And be it enacted, that any summons or Sect. 134.
notice, or any writ or other proceeding at law or in equity,
requiring to be served upon the promoters of the under-
taking, may be served by the same being left at or trans-
mitted through the post directed to the principal office of
the promoters of the undertaking, or one of the principal
offices where there shall be more than one, or being given
or transmitted through the post directed to the secretary,
or in case there be no secretary the solicitor of the said
promoters.

ACTION FOR TRESPASS OR WRONGFUL
PROCEEDING UNDER ACT.

Tender of Amends.

Sect. 135. CXXXV. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action ; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the Court where such action shall be pending, at any time before issue joined, to pay into Court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

RECOVERY OF FORFEITURES, PENALTIES, AND COSTS.

Summary Proceeding before Two Justices.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows :

CXXXVI. Every penalty or forfeiture imposed by this Sect. 136. or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices ; and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons ; and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode ; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them ; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty of forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Distress in Default of Payment.

Sect. 137. CXXXVII. If, forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.

Mode of Distress.

Sect. 138. CXXXVIII. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of Penalties.

Sect. 139. CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor rate of such parish, or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor rate of such extra-parochial place, or if there shall not be any poor rate

therein, in aid of the poor rate of any adjoining parish or Sect. 139.
district.

Distress against Treasurer.

CXL. If any such sum shall be payable by the promoters Sect. 140.
of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not Void through Want of Form.

CXLI. No distress levied by virtue of this or the special Sect. 141.
Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Penalties to be Sued for within Six Months.

Sect. 142. CXLII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Penalty on Witnesses.

Sect. 143. CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Form of Conviction.

Sect. 144. CXLIV. The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (C) to this Act annexed.

*No Proceeding to be Quashed or Removed by
Certiorari for Want of Form.*

CXLV. No proceeding in pursuance of this or the Sect. 145.
special Act, or any Act incorporated therewith, shall be
quashed or vacated for want of form, nor shall the same be
removed by *certiorari* or otherwise into any of the superior
courts.

Where a jury awarded compensation in respect Compensa-
tion given
in case
provided
for by
Railways
Clauses
Act.
of the cost of a bridge, which the company would
be bound to construct under section 20 of the
Railway Clauses Act, it was held that in spite of
this section a *certiorari* would lie to remove the
proceedings. (*South Wales Railway Company v.*
Richards, 6 Rail. Cas. 197.)

And so, also, where an adjudication by two Adjudica-
tion of
Justices
bad under
11 & 12
Vict. c. 43,
s. 11.
justices of the amount of compensation is bad,
under 11 & 12 Vict. c. 43, s. 11. (*Re Edmundson*,
17 Q. B. 67.)

So, also, where the sheriff, being interested, had Sheriff
interested.
no jurisdiction. (*Reg. v. London and North Western*
Railway Company, 12 W. R. 208.)

Or where the jury have purported to decide a Decision
of question
of right.
question of right. (*In re Horrocks and Metro-*
politan Railway Company, 11 W. R. 910; *Reg. v.*
London and North Western Railway Company, 3
E. & B. 443.)

Appeal to Quarter Sessions. Security.

CXLVI. If any party shall feel aggrieved by any deter- Sect. 146.
mination or adjudication of any justice with respect to any

Sect. 146. penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the General Quarter Sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained, unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith, after such notice, enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon.

Power of Court of Quarter Sessions.

Sect. 147. CXLVII. At the Quarter Sessions for which such notice shall be given, the Court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions, and upon the hearing of such appeal, the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of Metropolitan Police District to Receive Penalties incurred within District.

Sect. 148. CXLVIII. Provided always, and be it enacted, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith contained, every penalty

or forfeiture imposed by this or the special Act, or any Act Sect. 148. incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the Metropolitan Police District, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the Metropolitan Police District, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Perjury.

CXLIX. And be it enacted, that any person who upon Sect. 149. any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

ACCESS TO SPECIAL ACT.

Copies to be kept by Company, and deposited with Clerk of Peace for County and be open to Inspection.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows :

Sect. 150.

CL. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them ; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special Act so printed as aforesaid ; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her present Majesty, intituled " An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

Penalty for Default.

CLI. If the company shall fail to keep or deposit, as Sect. 151. hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

GENERAL CLAUSES.

Extent of Act.

Sect. 152. CLII. And be it enacted, that this Act shall not extend
to *Scotland*.

Alteration of Act.

Sect. 153. CLIII. And be it enacted, that this Act may be amended
or repealed by any Act to be passed in the present session
of Parliament.

LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860.

- § 1. Part of Section 10 of Act of 1845 repealed.
- § 2. Power to sell on Chief Rent extended.
- § 3. Similar Proviso with regard to 8 & 9 Vict. c. 19, s. 10
(Scotch Act).
- § 4. Mode of Settling Amount of such Chief Rent.
- § 5. Borrowing Powers reduced in Proportion.
- § 6. Sections 6—15 of Act of 1845 extended to Purchases of Land
for Public Purposes.
- § 7. Secretary for War may use Powers of these Acts.
- § 8. This Act and Act of 1845 to be construed together.

Whereas it is expedient to extend the provisions of the Lands Clauses Consolidation Act, 1845, in regard to sales of land, or compensation for damages, in consideration of an annual rent-charge, annual feu duty, or ground annual, and to enable Her Majesty's Principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Act for the purchase of lands wanted for the service of the War Department, or for the defence of the realm: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Part of Section 10 of Act of 1845 repealed.

Section 1. So much of the 10th section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the case of lands of which any person is seised in fee, or entitled to dispose absolutely for his own benefit, the consideration to be paid for any lands or for any damage done thereto shall be in a gross sum, is hereby repealed.

Power to sell on Chief Rent extended.

Section 2. The power to sell and convey lands in consideration of an annual rent-charge provided by the 10th section of the said Act, and the power to recover such rent-charge provided by the 11th section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act, where the parties interested in such sale or entitled to such compensation are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

*Similar Proviso with regard to 8 & 9 Vict. c. 19,
s. 10 (Scotch Act).*

Section 3. The power to sell and convey lands in consideration of an annual feu duty or ground annual under the 10th section of the Lands Clauses (Scotland) Act, 1845, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said Act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

Mode of Settling Amount of such Chief Rent.

In every case of such sale or compensation by any Section 4. parties, other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rent-charge, annual feu duty, or ground annual hereinbefore mentioned, shall be settled in the manner directed in the 9th section of each of the said Acts respectively, provided that the amount of such annual rent-charge, annual feu duty, or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands upon an average of the last seven years, and that a charge of five per cent. on the gross sum, estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said lands shall, in all such cases, be added to and shall form a part of the said rent-charge, annual feu duty, or ground annual, and that no fine, foregift, grassum premium, or other consideration in the nature thereof shall be paid or taken in respect of the lands so sold or damaged, other than the annual rent-charge, annual feu duty, or ground annual made payable for such lands: Provided also that such rent-charge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

Borrowing Powers reduced in Proportion.

Section 5. In case the promoters of the undertaking shall be empowered by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to any amount not exceeding a prescribed sum, then, in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person, under the powers of this Act, and of either of the Acts hereinbefore mentioned, or either of the said Acts, only for the purchase of any lands in consideration of the payment of a rent-charge, annual feu duty, or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rent-charge, annual feu duty, or ground annual, so for the time being payable.

Sections 6—15 of Act of 1845 extended to Purchases of Land for Public Purposes.

Section 6. The clauses contained in the Lands Clauses Consolidation Act, 1845, relating to the purchase of lands by agreement, and to agreements for sale and conveyances, sales and releases of any lands or hereditaments, or any estate or interest therein by parties under disability, shall extend and be applicable to all purchases of land and hereditaments for public purposes which shall hereafter be made by the council of any city or borough, with the sanction of the Commissioners of Her Majesty's Treasury, under the powers for that purpose contained in the Municipal Corporation Mortgages, &c., Act, 1860.

Secretary for War may use Powers of these Acts.

For the purchase or acquisition of any messuages, lands, Section 7.
tenements, and hereditaments wanted for the service of
the Admiralty or of the War Department, or for the
defence of the realm, it shall be lawful for Her Majesty's
Principal Secretary of State for the War Department for
the time being to use all or any of the powers and provisions
by the Lands Clauses Consolidation Act, 1845, and by the
Lands Clauses Consolidation (Scotland) Act, 1845, given
to promoters of the undertaking as therein mentioned,
and for such purposes the said Principal Secretary shall
be deemed and taken to be the promoters of an undertaking
within the meaning of the said Act, and all the powers
and provisions thereof shall, if used by Her Majesty's
Principal Secretary of State for the War Department, be
treated as if they were contained in the 5 & 6 Vict. c. 94,
for the purpose of being used and made available by the
principal officers of Her Majesty's Ordnance, and had been
transferred to the Principal Secretary for the time being
by the 18 & 19 Vict. c. 117, for the purposes aforesaid;
Provided always that nothing herein contained shall
authorise any purchase otherwise than by agreement of
any land except according to the provisions of the 23rd
section of the said Act of the 5 & 6 Vict., or prejudice or
affect the powers and authorities of the said Principal
Secretary for the time being under the said last-mentioned
statutes or either of them.

*This Act and Act of 1845 to be construed
together.*

This Act shall be read and construed as part of the said Section 8.
Lands Clauses Consolidation Act, 1845, or of the Lands

Section 8. Clauses Consolidation (Scotland) Act, 1845, in all matters in which it relates to the said Acts respectively, and in citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

LANDS CLAUSES CONSOLIDATION ACT,
1869.

- § 1. Taxation of Costs of Arbitrations by Master of Superior Courts.
- § 2. Repeal of Section 33 of Regulation of Railways Act, 1868.
- § 3. High Bailiff of Westminster substituted for Sheriff in Cases of Determination of Compensation by a Jury.
- § 4. Short Title and Construction of Act.

Whereas it is expedient that the provisions contained in the Lands Clauses Consolidation Act, 1845, should be amended:

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Taxation of Costs of Arbitrations by Master of
Superior Courts.*

Where in England, under the Lands Clauses Consolidation Act, 1869, or any Act incorporating the same, any question of disputed compensation is determined by arbitration, the costs of and incidental to the arbitration and award, shall, if either party so requires, be taxed and settled as between the parties by any one of the taxing masters of the Superior Courts of Law, and such fees may be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be

Section 1.

Section 1. demanded and taken in the offices of such masters, and all those enactments, including the enactments relating to the taxing of fees by means of stamps, shall extend to the fees in respect of the said taxation.

Jurisdiction of Court to review.

Where costs are taxed by a master under this section, the Court has no jurisdiction to review the taxation. (*Sandback Charity Trustees v. North Staffordshire Railway Company*, L. R. 3 Q. B. D. 1; *Owen v. London and North Western Railway Company*, L. R. 3 Q. B. 54. See also section 52.)

Application of section.

This section applies only to arbitrations purely and simply under these Acts, and not to those which include matters which but for agreement between the parties could not be dealt with. (*Doulton v. Metropolitan Board of Works*, L. R. 5 Q. B. 333.)

Not retrospective.

This section is not retrospective. (*Doulton v. Metropolitan Board of Works*, L. R. 5 Q. B. 333.)

Applies only to arbitrations.

Where before the award has been made the parties have agreed that the company shall "pay costs of and incidental to that agreement and the reference and arbitration, and the conveyance of the lands and premises, including valuers' and surveyors' charges, and solicitors' charges as between solicitor and client," they were held to have taken themselves out of the operation of this section. (*Wombwell v. Corporation of Barnsley*, 36 L. T. N. S. 708.)

Public Health Act, 1875.

Where lands are taken under the Public Health Act, ss. 175-178 of which incorporate these Acts, the proceedings are governed by these Acts, and section 179 and the following sections of the

Public Health Act do not apply to lands taken Section 1.
compulsorily under it. (*Reg. v. Master G. J. Philip Smith*, 26 W. R. 812.)

The master is not bound under this section to Master not bound to tax unless claimant entitled.
tax the costs of an arbitration unless the claimant is entitled to costs under section 34 of the Act of 1845. (*Fitzhardinge v. Gloucester and Berkeley Canal Company*, L. R. 7 Q. B. 776.)

Repeal of Section 33 of Regulation of Railways Act, 1868.

Section 33 of the Regulation of Railways Act, 1868, is Section 2.
hereby repealed, and any proceedings commenced in pursuance of that section may be continued under this Act as if they had been commenced under it.

High Bailiff of Westminster substituted for Sheriff in Cases of Determination of Compensation by a Jury.

Where any lands by the special Act authorised to be Section 3.
taken are situate within the city and liberty of Westminster, then with respect to those lands in every case in which any question of disputed compensation is required by the Lands Clauses Consolidation Act, 1845, or any Act amending the same, to be determined by the verdict of a jury, the high bailiff of the city and liberty of Westminster or his deputy shall be deemed to be substituted for the sheriff throughout such of the enactments of the Lands Clauses Consolidation Act, 1845, and any Act amending the same, as relate to the reference to a jury.

Short Title and Construction of Act.

Section 4. This Act may be cited as "The Lands Clauses Consolidation Act, 1869," and shall be construed as one with the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and these Acts and this Act may be cited together as the Lands Clauses Consolidation Act, 1845, 1860, and 1869.

COSTS USUALLY ALLOWED.

The costs of the inquiry before a jury are regulated by sections 51, 52, and 53 of 8 & 9 Vict. c. 18.

Section 51 enacts that, on every inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry (as defined by section 52) (see *Bray v. South Eastern Railway Company*, 19 L. J. Q. B. 11) shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking; and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Section 52 provides that the costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench in England or Ireland, according as the lands are situate, on the application of either party; and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

And section 53 enacts that, if any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provisions thereafter (sections 52—62) contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or, if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

In *Sandback Charity Trustees v. North Staffordshire Railway Company*, L. R. 3 Q. B. D. 1; *Owen v. London and North Western Railway Company*, L. R. 3 Q. B. 54; *Ross v. York, Newcastle, and Berwick Railway Company*, 5 D. & L. 695; 5 Rail. Cas. 516; 18 L. J. Q. B. 199; and *Ex parte Scully*, 11 Irish Law Rep. 392, it was held that the Courts have no authority to review the taxation or to order the Master to reconsider his determination, although he may have made a mistake in the taxation.

The costs of proceedings for the assessment of compensation before a jury under this Act, or any Act incorporating the provisions of it, where the lands are situate in the City of London, are taxed before the Registrar of the Lord Mayor's Court.

The taxation of costs of conveyances is provided for by sections 82, 83.

1. *Ordinary Allowances made by the Master of the Court of Queen's Bench in Compensation Cases under the Lands Clauses Consolidation Act, 1845.*

Instructions 0 13 4

Perusing the company's warrant to the sheriff .	0	6	8
Instructing the qualifying surveyors (each) .	0	6	8
Case to advise on evidence (ordinary charges).			
Instructions to have the case tried by a special jury (section 54)	0	6	8
Notice to the sheriff and to the company (each) .	0	5	0
Nominating, &c., special jury (ordinary charges).			
Instructions for brief (ordinary charges).			
Drawing (1 <i>s.</i> per fo.), copying (4 <i>d.</i> per fo.).			
Notice to produce and admit (ordinary charges).			
Consultations (as usual).			
Instruction to counsel for a view (each)	0	6	8
Fee to counsel and clerk for a view (each) (a) .	5	10	0
Attending view	2	2	0
Travelling expenses (as usual).			
Attending sheriff for summonses for witnesses (6 <i>s.</i> 8 <i>d.</i> for every three).			
Paid sheriff for summons for each witness	0	5	0
Serving each witness	0	10	0
Mileage (as usual).			
Attending inquiry (first day)	3	3	0
The like clerk's attendance	1	1	0
Travelling expenses (as usual).			
Attending under-sheriff for return	0	6	8
Paid (as paid).			
Plans, not exceeding	10	10	0
Letters, messengers, &c.	1	0	0
Bill of costs and copy (as usual).			
Attending taxing (as usual).			
Paid (as paid).			

The ordinary allowance to surveyors for qualifying is five guineas per day actually employed, and three guineas for making a report.

Two surveyors only are allowed by the Masters; but where the costs are taxed by the Registrar of the Mayor's

(a) One counsel only allowed by the Registrar of the Mayor's Court on a view, and then three guineas only.

Court, London, three are allowed, and ordinarily a lump sum to each, proportioned to the value and extent of the premises, from ten to fifteen guineas, or more, if the amount is large.

In the City, where plant is valued, the usual allowance is 5 per cent. on the first 100*l.*, 2½ per cent. up to 500*l.*, and 1 per cent. beyond that sum.

Fees to counsel are in the discretion of the taxing officer. The ordinary allowance by the Master is from 50 to 75 guineas for the leader, and from 30 to 40 guineas to the junior, where the amount is large. In the City of London the maximum for the leader is 50 guineas, and for the junior 30 guineas, unless in a very exceptional case.

2. Costs of Assessment before a Special Jury of Compensation for Lands taken by a Railway Company.

1863. July. Attending accepting service of notice to treat on behalf of the trustees	0	6	8
Instructions	2	2	0
Instructions to Mr. J., surveyor, to qualify	2	2	0
Sept. Attending the solicitors of the company on their delivering bond for taking possession, and accepting service	0	6	8
1864. Aug. 9. Attending accepting service of notice to treat	0	6	8
1865. July 11. Attending accepting service of third notice to treat	0	6	8
1866. May 10. Letter to Mr. T. asking him for an appointment to see him thereon, and also as to whether the claims could be settled	0	3	6
11. Attending at Mr. T.'s and conferring as to the company having taken possession of the lands without having given the usual bonds, conferring thereon, and I assented to waive the bonds, upon his writing me a letter that the claimant should be placed in the same position as though she had been served; and			

he wished me to send in claims before he discussed terms of settlement	0	13	4
June 8. Instructions for notice to issue warrant to summon a jury as to part of No. 10 on the plan	0	6	8
Drawing same (fos. 10)	0	10	0
6. Drawing notice as to remaining part of No. 10 (fos. 10)	0	10	0
Drawing instructions as to No. 14	0	10	0
Attending obtaining Mr. W.'s signature to notice, and explaining same	0	6	8
Oct. 3. Attending at Mr. T.'s, when he accepted service of the notices on behalf of the company	0	6	8
Having received letter that the company had lodged one warrant, letter to them for copy	0	3	6
Retainer to Mr. H., and clerk	1	3	6
Attending him	0	6	8
30. Attending to nominate special jury	0	13	4
Copy list	0	5	0
Instructions to reduce	0	13	4
Attending to reduce	0	6	8
Copy reduced list	0	2	6
Nov. Six subpoenas ad test.	3	0	0
Copy and service on Mr. L., at Stoke Newington (4 miles)	0	6	0
The like on three other witnesses, and mileage (as paid).			
Letter to Mr. J. (surveyor), informing him of the appointment for inquiry	0	3	6
Letters to Mr. M. and Mr. D., two other surveyors (each 3s. 6d.).			
Instructions to advise on evidence	0	13	4
Fee to Mr. W. to advise on evidence, and clerk	2	4	6
Attending him	0	6	8
Attending Mr. J. instructing him as to plans required upon the inquiry	0	6	8
Instructions for brief, including attendances at			

Tottenham, Stoke Newington, Westminster, Langham Street, and Edmonton, and paid expenses and railway fares and cab-hire	6	6	0
Drawing same (fos. 115)	5	15	0
Two brief copies thereof (4 <i>d.</i> per fo.)	3	16	0
Two brief copies of the following documents, to accompany :—			
Notice to treat as to No. 10 on the plan, one piece (fos. 7 each)	0	4	8
The like as to claim (fos. 10 each)	0	6	8
Notice to treat as to remainder of No. 10 (fos. 7 each)	0	4	8
The like of claim (fos. 10 each)	0	6	8
Notice to treat as to No. 14 (fos. 7 each)	0	4	8
The like of claim (fos. 10 each)	0	6	8
Warrant to summon jury (fos. 10 each)	0	10	8
Drawing plans on ditto	0	10	0
Notice to produce	0	4	0
Correspondence (fos. 26 each)	0	17	4
Plans for counsel, surveyors, and sheriff, &c.	2	2	0
Fee to Mr. H., Q.C., with brief, and clerk	55	0	0
Attending him	0	13	4
Fee to Mr. W. with brief, and clerk	22	0	0
Attending him	0	13	4
Consultation fee to Mr. H.	2	9	6
Attending to appoint	0	3	4
Consultation fee to Mr. W.	1	3	6
Attending him	0	3	4
Attending consultation	0	13	4
Fee to Mr. H. and clerk, on view	5	10	0
Attending to appoint	0	6	8
Fee to Mr. W. and clerk, on view (a)	3	5	6
Attending him	0	6	8
Attending sheriff's court upon hearing of inquiry, appointing Mr. J. as viewer on behalf of Mrs. W.; afterwards attending at H. Lane with			

(a) *Vide ante*, p. 353, n. (a).

jury, and upon their return proceeding with the inquiry, when a verdict was given for the claimant for 1200 <i>l.</i> for the land taken, and 200 <i>l.</i> for the damage to the residue; engaged from 10 a.m. to 5 p.m., and view	4	4	0
Paid ushers' fees on hearing	1	0	0
Drawing bill of costs and copy, and copy for the company's solicitor	2	0	0
Attending for appointment to tax	0	3	4
Notice of taxing, copy and service	0	4	0
Attending taxing	1	11	6
Paid taxing fee	2	0	0
Attendances, letters, messengers, telegrams, post-ages, cab-hire, and incidental expenses not before charged	2	2	0
Paid surveyors and other witnesses, as follows,—			
Mr. J. (surveyor)	24	10	0
Mr. D. (surveyor)	16	0	0
Mr. M. (surveyor)	3	3	0
Mr. A.	1	1	0
Mr. S. C.	1	1	0
Mr. R.	3	3	0
Mr. C.	1	1	0

3. *Claimant's Costs on Assessment by a Special Jury of Compensation for Lands taken, and Damage by Severance.*

1874. July 26. Instructions to Mr. T. to survey land taken and damage done by severance, and to report us thereon, and fair copy; also plans of adjoining estates, and numerous papers to accompany same, and attendance	1	1	0
Aug. 10. Having received letter from claimant approving of claim, instructions for claim	0	6	8
Drawing same	0	13	4
Ingrossing claim in duplicate	0	6	8

12. Letter to claimant with instructions to sign claims and return them to us	0	3	6
15. Attending at South Western Railway offices at Waterloo terminus serving claim on secretary	0	6	8
17. Having received letter from Messrs. B. & Co. (the company's solicitors) proposing that their surveyor should meet Mr. T. to settle compensation, letter in reply	0	3	6
Making copy valuation, for claimant	0	5	0
Sept. 7. Attending Mr. C., the company's surveyor, conferring hereon, and referred him to Mr. T., who was instructed to endeavour to arrange with him the amount of compensation	0	6	8
8. Attending Mr. T. instructing him to see Mr. C., and conferring upon valuation; engaged two hours	0	13	4
13. Attending Messrs. B. & Co., when they brought us notice of intention to summon a jury, and left duplicate to indorse our acceptance thereon; and they wished us to employ Mr. H., Q.C., to enable them to have Mr. L., who held a general retainer for the company: promised to consider it and let them know	0	6	8
Letter to Messrs. B. & Co. as to our retaining Mr. H.	0	3	6
Letter to claimant informing him the company was about summoning a jury	0	3	6
Retainer to Mr. H. and clerk	1	3	6
Attending him	0	6	8
1875. March 1. Having received letter from Messrs. B. & Co. asking for six prints of the particulars and conditions of sale of the 7th July and 7th Sept. last, and a printed copy deed referred to in the 7th condition, letter in reply inclosing same	0	3	6

Letter to Messrs. B. & Co. to endeavour to arrange a day for inquiry to take place . . .	0	3	6
8. Having received letter from Messrs. B. & Co., and also notice to summon special jury, writing letters to Messrs. O., P., T., S., W., and Y., informing them that hearing was appointed for Friday, the 24th inst.	0	11	0
Attending bespeaking copy of warrant to summon jury, and afterwards for same . . .	0	6	8
Paid	0	15	0
13. Attending at Queen's printers for and obtained three copies of Company's Act . . .	0	6	8
Paid for same	0	6	0
Attending nominating special jury . . .	0	13	4
Attending for and obtained copy special jury panel	0	6	8
15. Making fair copy special jury panel . . .	0	2	6
Letter to claimant therewith and thereon . . .	0	3	6
Having received letter from Messrs. B. & Co. inquiring if we should have a junior counsel, letter in reply	0	3	6
Instructions for brief, including numerous attendances upon different persons in B. and adjoining neighbourhood to ascertain value of land	12	12	0
Drawing brief (fos. 180)	9	0	0
Making two fair copies thereof (4d. per fo.) . . .	6	6	8
The like correspondence (fos. 16 each) . . .	0	10	8
The like conveyance from H. to P. (fos. 54 each) . . .	1	16	0
Plans thereon	0	10	0
The like articles of agreement (fos. 12 each) . . .	0	8	0
Plans	1	10	0
The like warrant to summon jury (fos. 12 each) . . .	0	8	0
Plans	0	10	0
The like notices to inspect and produce (fos. 48) . . .	0	16	0
Attending Mr. H., Q.C., with brief and papers . . .	0	13	4
Fee to him and clerk	77	0	0

Attending him appointing view	0	6	8
Fee to him and clerk	5	15	0
Attending him appointing conference on evidence	0	6	8
Fee to him and clerk	2	9	6
Attending conference with Mr. H., Q.C., at Westminster Hall, with Mr. O., Mr. P., and Mr. T., entering fully into the case, when Mr. H. advised that we should subpoena those persons who had bought land in the neighbourhood, and sold at a profit	0	13	4
Attending Mr. H. appointing consultation with Mr. R.	0	3	4
Attending Mr. R. with brief and papers	0	13	4
Fee to him and clerk	39	12	0
Attending him appointing view	0	6	8
Fee to him and clerk	3	5	6
Attending him and appointing consultation	0	3	4
Fee to him and clerk	1	3	6
16. Letter to claimant therewith and with full particulars of approaching inquiry	0	3	6
Drawing notice to inspect and admit, and fair copy (fos. 10)	0	10	0
The like to produce	0	10	0
17. Instructions to reduce special jury	0	13	4
Attending reducing	0	6	8
Fair copy reduced list	0	2	6
Notice to Messrs. B. & Co. that claimant required view, copy and service	0	4	0
Copies notice to inspect and admit, to mark for inspection	0	4	0
20. Attending Messrs. B. & Co. producing documents for their inspection; engaged two hours	0	13	4
Attending receiving admissions	0	6	8
Having received letter from Messrs. B. & Co. requesting us to make a copy of conveyance to Mr. P. and agreement, making same, as follows :			

Copy deed of conveyance and plan (fos. 54)	1	3	0
Copy of agreement, and plan (fos. 12)	0	19	0
Letter to Messrs. B. & Co. therewith	0	3	6
Twenty subpoenas (9s. each)	9	0	0
Copies and services on twenty persons, conduct-money, and mileage (as paid).			
Paid for six copies of the plan of Conservative Land Society's land adjoining claimant's	0	3	0
Attending to inspect documents, same not left out	0	6	8
Journey to and attending on the land and viewing same with counsel	1	1	0
Paid expenses	0	5	0
24. Attending inquiry at Freemasons' Tavern, W. Common, and thence to view land with the jury, and afterwards to the hotel, when claimant's case was gone into and completed; further hearing adjourned until the next day at 10, at the Sessions House, Newington	3	3	0
Clerk's attendance	1	1	0
Instructions to Mr. H., Q.C., to attend at Newington Sessions House	0	6	8
Fee to him and clerk	27	10	0
Attending him	0	13	4
25. Attending adjourned inquiry, when the jury awarded the claimant 5600 <i>l.</i> ; engaged all day	3	3	0
Clerk's attendance	1	1	0
Drawing bill of costs and two fair copies	2	15	0
Attending for appointment to tax	0	3	4
Notice thereof, copy and service	0	4	0
Attending taxing	3	3	0
Paid	2	15	0
Letters, messengers, cab-hire, &c., not before charged	1	1	0

4. *Claimant's Costs on Assessment before an Arbitrator of Compensation for Lands taken (a).*

1875. Aug. 16. Preliminary charges (b)	21	0	0
Attending Mr. W. obtaining his signature to appointment of arbitrator	0	6	8
The like attendance on Mr. J.	0	6	8
Copy appointment, to keep	0	3	4
8. Attending Mr. W. as to further information required	0	6	8
Writing Messrs. B. & Co. with appointment of arbitrator	0	3	6
9. Attending Mr. W. two hours, going through maps and plans and other matters to enable us to advise him as to the evidence to be produced	0	13	4
19. Writing you, informing you of appointment made by Mr. L.	0	3	6
26. Attending Messrs. B. & Co. with regard to the postponement of the hearing in consequence of the illness of one of the parties.	0	6	8

(a) By s. 34 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), all the costs of the arbitration and incident thereto, to be settled by the arbitrator (or umpire, *Bowen v. Williams*, 3 Ex. 93; *Gould v. Staffordshire Potteries Waterworks Co.*, 5 Ex. 214; 19 Law J. Ex. 281), are to be borne by the company, unless the arbitrators (or umpire) award the same or a less sum than was offered by the company, in which case each party is to bear his own costs incident to the arbitration, and the costs of the arbitrators (or umpire) are to be borne by the parties in equal proportions.

A doubt was formerly entertained as to whether the amount of the costs must not be ascertained by the arbitrators (or umpire) on the face of the award (see *London and North Western Ry. Co. v. Quick*, 5 D. & L. 685; *Wilts, Somerset, and Weymouth Ry. Co. v. Fooks*, 3 Ex. 728). But in *Gould v. Staffordshire Potteries Waterworks Co.*, 5 Ex. 214; 19 Law J. Ex. 281, the Court of Exchequer held that the costs may be given by a supplementary certificate or award, and that the adjudication of costs may be made after the expiration of the period limited for making the award.

Where the reference is by deed or other instrument without reference to the provisions of the Lands Clauses Consolidation Act as to the costs, and the deed or agreement is silent on the subject, the claimant can have no costs, even though the award be for a larger sum than the company had previously offered.

(b) These charges were for attendances upon the claimant and upon surveyors and others, for the purpose of inquiring into the claimant's rights, and as to the mode of shaping his claim, and correspondence and conferences with the company's solicitors on the subject.

28. Writing Messrs. W. & J. with further appointment, the first one having been postponed to suit Messrs. B. & Co.	0	5	0
Retainer fee to Mr. H., Q.C., and clerk	1	3	6
Attending him	0	6	8
Attending Mr. W., arranging with him to take the necessary steps with regard to the adjournment and the attendance of the requisite parties	0	6	8
Writing Mr. L. to know if he could attend and give evidence at the adjourned appointment	0	3	6
Writing to Mr. W. informing him of the adjourned appointment	0	3	6
July 11. Writing Mr. L. to call here at 2.30 to-morrow	0	3	6
Writing Messrs. W. & J. to meet him	0	3	6
12. Attending Mr. W. and Mr. L. conferring at length as to the points to be met and the evidence to be provided	1	1	0
Attending Mr. L. in Whitehall Place to confer with him on the subject of further evidence	0	13	4
Attending Mr. J. reporting what we had done in reference to engaging surveyors, and stating that we were waiting for Mr. L.'s report, which however could not be sent until he was furnished with certain materials by Mr. W.	0	6	8
Writing Mr. F. informing him that the arbitrator had fixed Thursday next to take this case, and requesting him to attend	0	3	6
17. Attending Mr. L. at W. requesting him to furnish his report, and as to meeting Mr. P.	0	6	8
Attending Mr. W. twice this day, conferring as to the evidence, &c.	0	13	4
Attending Mr. E.'s clerk informing him that Mr. E.'s attendance would be required on the 19th, and making appointment for you to meet the other surveyor on the 18th	0	6	8

COSTS USUALLY ALLOWED.

Telegram to you requesting you to attend here at once, and attending to transmit same . . .	0	7	4
Writing Mr. W. to come here for us to take his proof	0	3	6
Writing Mr. F. to the like effect	0	3	6
18. Attending Mr. H.'s clerk, when he stated that Mr. H. could not certainly attend, and afterwards attending Messrs. B. & Co. thereon, when they proposed a postponement, as Mr. L., their counsel, could not attend; and con- ferring on the matter	0	6	8
Attending Mr. J. as to the witnesses to be called in support of measurements, &c., and advising whom he should have in attendance	0	6	8
Instructions for brief	10	10	0
Drawing same (1s. per fo.)	10	8	0
Two brief copies for counsel (4d. per fo.)	6	18	8
Two sets of ten plans referred to in various docu- ments, to annex to briefs	10	10	0
Paid Mr. H., Q.C., with brief and clerk	55	0	0
Attending him	0	13	4
Paid him consultation fee, and clerk	2	9	6
Attending him	0	6	8
Paid to Mr. C. R. with brief and clerk	27	10	0
Attending him	0	13	4
Paid him consultation fee, and clerk	1	3	6
Attending him	0	6	8
Attending consultation	0	13	4
Attending reference at W., witnesses examined, and case completed on each side; self and clerk	5	5	0
Subsequent attendances, paying witnesses, &c.	2	2	0
Letters, messengers, and incidental expenses	3	3	0
Drawing bill of costs and copies	3	0	0
Attending settling costs	2	2	0
Costs of settling	10	10	0

5. *Costs for holding Court of the High Bailiff of Southwark on Assessment of Compensation by a Special Jury.*

1872. June 13. Attending Messrs. T. receiving warrant to summon special jury, giving receipt for same, and taking their instructions, and arranging for time and place	0	6	8
Attending magistrates obtaining their permission for use of Sessions House, Newington, for holding the inquiry	0	13	4
Notice to the parties to attend and nominate special jury on Tuesday next, the 17th inst., at 12 at noon	1	1	0
17. Attending for special jury list for the county of Surrey, and obtained same, giving receipt for same, and attending returning same	0	13	4
Paid for same	1	1	0
Paid cab-hire with box and papers both ways	0	3	0
Nominating special jury, and High Bailiff's fee	2	2	0
Copy lists	1	1	0
Notice of appointment to reduce, copy and service on both parties	0	10	0
19. Reducing list of special jurors, and High Bailiff's fee thereon	2	2	0
Fair copy lists, as reduced	1	1	0
Preparing twenty summonses to officer to summon special jury, and warrant	2	5	0
Paid officer's fee for serving same	3	3	0
Notice to Messrs. F. & A. (claimant's solicitors) of day of hearing	0	5	0
The like to Messrs. T., the company's solicitors	0	5	0
Attending at Sessions House, Newington, to arrange for the Court to be in readiness on Thursday next, the 26th inst., at 11 a.m.	0	6	8
Paid fee to assessor and clerk, and attending instructing him	16	8	4

COSTS USUALLY ALLOWED.

26. High Bailiff's fee on attending inquisition			
with assessor (a)	5	5	0
Paid assessor's fee on view, and clerk	2	4	6
Paid cab-hire for counsel and jury to view	1	0	0
Attending with assessor to view premises	2	2	0
Paid housekeeper at Sessions House for use of			
Court, and attendance	2	2	0
27. Fair copy inquisition to keep, as signed	0	6	8
Paid filing	0	5	0
Attending clerk of the peace	0	13	4
Cab-hire, letters, messengers, and incidental ex-			
penses not before charged	1	1	0

(a) The High Bailiff's fee on attending inquisition, no assessor being required, and cab-hire and expenses, 7*l.* 7*s.*

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 - (b) Determination of Value.
16. Notice of Intention to take Lands for Temporary Purposes (Roads).
 - (a) Power to take.
 - (b) Description of Land.
 - (c) Rent and Compensation.
17. Notice of Intention to take Lands for Temporary Purposes.
 - (a) Power to take.
 - (b) Description of Land.
 - (c) Power to Landowner to insist on Sale.
18. Notice of Intention to Underpin.
19. Notice to Treat and Agree.
20. Notice to Treat.
21. Notice to Treat for Easement.
22. Notice to Treat for severed Portion of less Value than Cost of making Communication.
23. Notice to Company, under Section 92.
24. Withdrawal of Notice to Treat and Substitution of Fresh Notice.
25. Notice of Intention to apply to Justices to correct Mistake in Plan.
26. Notice withdrawing Notice to Treat and substituting Fresh Notice.
27. Withdrawal of Notice to Treat as to Part of Lands after Counter Notice, under Section 92.
28. Appointment of Arbitrator by Company.
29. Notice by Company of Appointment of Arbitrator with Request to Landowner to appoint one.
30. Notice by Company of Appointment of Arbitrator (under Protest) to settle Value of Lands, under Section 92.

31. Appointment of Arbitrator by Landowner.
 - (a) Recital of Notice to Treat.
 - (b) Recital of Notice by Company of Appointment of Arbitrator.
32. Notice of Appointment of Arbitrator by Landowner.
33. Notice by Company of Appointment of Arbitrator.
34. Notice to Arbitrators to proceed.
35. Notice by Arbitrator of his Readiness to proceed. Refusal to consent to Umpire sitting with Arbitrators.
36. Agreement to extend the Time of the Arbitrators.
37. Request to Arbitrators to appoint Umpire.
38. Appointment by Arbitrators of Umpire.
39. Appointment of Umpire.
40. Agreement that Umpire may sit with Arbitrators.
41. Appointment by Arbitrators of Time and Place for Proceeding with Reference.
42. Agreement as to the Number of Witnesses.
43. Notice to produce Plans and Sections of intended Works.
44. Notice to Landowner to Produce.
45. Agreement that no Objection shall be taken by Reason of Award being made after the proper Time.
46. Notice of Intention to Summon Special Jury.
 - (a) Recital of Notice to Treat.
 - (b) Recital that Price has not been agreed upon.
- 46A. Notice of Intention to Summon a Jury, and Offer of Compensation.
47. Notice of Intention to Summon Special Jury.
48. Warrant to Summon Special Jury.
49. Warrant to Sheriff under Protest. Notice of Claim for injuriously affecting.
50. Waiver of Objection to interested Sheriff.
51. Notice from Sheriff of Appointment of Time and Place for Nomination of Jury.
52. Notice of Time and Place of holding Inquiry.
53. Sheriff's Notice of Day appointed for hearing Compensation Inquiry.
54. Request to Paymaster-General to prepare Directions for Payment into Court.
55. Request for Directions for Payment into Court, under Section 69.

56. Directions for Payment into Court, under Section 69.
57. Notice of Intention to apply to Board of Trade to appoint a Surveyor, under the Railway Companies Act, 1867.
58. Application to Board of Trade to appoint a Surveyor, under the Railway Companies Act, 1867.
59. Request to Board of Trade to appoint a Surveyor.
60. Notice of Entry to probe, bore, stake out, &c.
61. Bond under Section 85.
62. Request to Paymaster-General for Directions for Payment into Court, under Section 85.
63. Authority to present Petition.
64. Petition for Payment out of Money paid in under Section 85.
65. Notice of Claim for Apportionment of Rent.
66. Summons to apportion Rent.
67. Order of Justices apportioning Rent.
68. Notice to give up Possession of Premises required under Section 121.
69. Proceedings under Section 121. Notice to Produce.
70. Summons to appear before Magistrate.
71. Receipt for Compensation.
- 71A. Receipt for Compensation.
72. Receipt for Compensation, under Section 68.
73. Application for Summons to Tenant from Year to Year to attend before Justices to settle Compensation.
74. Notice under Section 122 to produce Lease.
75. Notice to adjoining Owners of Intention to Sell Superfluous Lands.
76. Notice of Claim.

Form 1.*Agreement for Sale and Purchase of Land.*

Memorandum of agreement, made this
 day of 18 , between
 (hereinafter called "the vendor") of the one part, and the
 Company (hereinafter called "the
 company"), by their agent of ,
 in the county of , land agent, of
 the other part.

(1.) By virtue of the powers and subject to the provisions of the Form 1.
--
 Act, 18 , the vendor agrees to sell, and the company agrees to purchase, for the purposes of the works authorised by the said Act, for the sum of

pounds, the freehold and inheritance in fee simple in possession, free from encumbrances, of and in all the piece of land, containing or thereabouts, situate in the township of

, in the parish of

, in the county of

, and being the piece or parcel of the piece of land and premises marked or referred to in the map or plan and book of reference thereto of the works authorised by the said Act, deposited at the office of the clerk of the peace for the said county, by the number

in the said

as the same particularized in the schedule hereunto annexed, and delineated on the plan attached hereto, and thereon distinguished by a colour, together with all mines, minerals, timber, rights, and interests therein or thereto belonging.

(2.) Such price shall include satisfaction and compensation What is included in price.
 for all damage, loss, or inconvenience, whether permanent, temporary or recurring, occasioned by severing the property purchased from the vendor's other property, or by otherwise injuriously affecting such other property by the exercise of the powers of the said Act, and shall be in full satisfaction for all communications, gates, bridges, fences, culverts, drains, watering-places, ways, passages, works, and things either over, under, across, by the side of, or near to the said (*undertaking*) (except such, if any, as are hereby specially provided for), which might otherwise be required to be made or done under the said Act for the better enjoyment, protection, or accommodation of the adjoining property and remainder of the estate of the vendor.

(3.) The vendor hereby consents to such alteration of Alteration of levels.

Form 1. levels and works as may be found convenient in making and maintaining the said works.

Allowance for inaccuracy of measurement. (4.) If the measurement of the land, as above stated, be found inaccurate, a proportionate addition or allowance shall be paid or allowed by either party, as the case may require.

Abstract. (5.) The vendor shall, within _____ days after being thereto required by the solicitors of the company, deliver to them an abstract of the title to the said land and hereditaments, but to such extent only as they shall require, and shall produce the deeds and muniments of title and other evidences in proof of the same, and the vendor and other necessary parties shall execute proper conveyances to the company, or as they may direct, of the said land and premises, with covenants for title and production of deeds or other evidences not handed over to them according to the usual practice on the purchase of lands by private individuals.

Title deeds.

Conveyance.

Liberty to take possession. (6.) The company shall be at liberty to take possession of the said land and premises at any time hereafter, and if required they shall pay the said purchase and compensation money into the _____ in the joint names of (on behalf of the vendor) and

(on behalf of the company), where the same is to remain at the risk of the vendor until the purchase shall be completed, whereupon it shall be paid to the vendor, or other parties entitled thereto or otherwise, into Court for their benefit as provided by the said Acts.

Time for completion.

(7.) The purchase shall be completed on or before the _____ day of _____ next, when the company shall pay to the vendor, or other parties entitled thereto, interest at the rate of five per centum per annum on such purchase and compensation money, or on so much thereof as shall remain unpaid or undeposited from the said _____ day of _____ next, or from the time of their taking possession (whichever shall first happen) until the completion of the said purchase.

(8.) The vendor shall deduct from the annual rent now Form 1. payable by the tenant a proportionate part of such rent Apportion- from the day of in respect of ment. the land and hereditaments agreed to be sold to the company, and shall release to the company any right of pre-emption that may be entitled to in respect of the lands hereby agreed to be sold, and the land tax and rent- Land tax. charge in lieu of tithes (if any) shall be apportioned rate- Tithes. ably between the land sold to the company and the other land of the vendor not charged therewith.

(9.) In case the company shall at any time before the If more actual completion of the works authorised by the said Act land require for the purposes thereof any additional land be- required. longing to the vendor, adjoining or near to the land hereby agreed to be sold, the same shall be taken and paid for by the company after the rate of £ per acre, without any further payment for or in respect of severance or other damage or instead of accommodation works, and all stipulations and provisions of this agreement shall be deemed to extend to such additional land as if it were included in the sale and purchase hereby specially agreed on.

(10.) The company shall pay the vendor's costs of Vendor's deducing and verifying the title and of the conveyance to costs. the company, as provided by the Lands Clauses Consolidation Act, 1845.

Nomination of two Surveyors.

Whereas the company require, and by virtue Form 2. of (*special Act*) are authorised to purchase and take the Recital of land and hereditaments, in the parish of , in the power to county of , described in the schedule hereto, and take. (*landowner's name and description*) is under the provi- Vendor's sions of the said Act and of the Lands Clauses Consolida- power to tion Act, 1845, as incorporated therewith, empowered to sell.

**Recital of
section 9.**

Nomina-
tion.

Given under the common seal of the said company, and
under the hand of the said (*landowner*), this day
of 19 19 19

*Agreement for Sale in Consideration of a Rent-charge.
Special Covenants.*

Form 3. Memorandum of agreement, made this _____ day of _____, 18____ between the _____ Company (hereinafter called "the company"), by _____, of _____, in the county of _____, their agent, of the one part, and _____, of _____, in the county _____

of _____, and _____ of _____
in the county of _____ (hereinafter called "the
purchasers"), of the other part.

Form 8.

The said company, in consideration of the rent and covenants hereinafter mentioned, doth hereby agree with the said purchasers—

(1.) That when and so soon as the architect or surveyor for the time being of the company (hereinafter called "the architect") shall have given his written certificate that the buildings hereinafter agreed to be built are completed and made fit for occupation to his satisfaction, the company shall convey all that piece or parcel of land, situate in _____, and parish of _____, in the county of _____, and containing _____ square yards, more or less, and delineated on the plan attached hereto, and thereon coloured _____, with the appurtenances thereto belonging (except mines and minerals, if any, thereunder), to the uses following (that is to say), to the use that the company, their successors, or assigns, may from the _____ day of _____, 18____, receive out of the said premises a perpetual yearly rent-charge of £ _____ per annum to be issuing out of and charged upon the same, and payable half-yearly, on the _____ day of _____, and the _____ day of _____, without any deduction (except for the property or income tax in respect of the said rent); the first payment of £ _____ to be made on the _____ day of _____, and to be made and taken as the entire rent for the preceding year, with power of distress in case of default in payment for thirty days, and power of entry and perception of rents and profits in case of default in payment for _____ days, and subject to the said rent-charges and to the powers and remedies aforesaid for recovery thereof, to the use of the purchasers, their heirs and assigns for ever.

(2.) The purchasers may, immediately after the execution of the agreement, enter the said plot of land and erect

Form 3. the messuages and buildings, and otherwise proceed with the works contemplated by this agreement.

(3.) The purchasers shall, before the day of , at their expense, under the inspection and to the satisfaction of the architect, build, cover in, and completely finish, fit for occupation, upon the said plot of ground, with good and proper materials of all sorts, and in a good, substantial, and workmanlike manner, buildings, which shall be of the value of £ at the least, which shall be constructed according to the plans and elevations to be approved of by the architect and under his inspection.

(4.) If the purchaser shall at any time leave or cease to prosecute the works on the said plot of ground for consecutive calendar months, or shall not complete the said buildings before the said day of , 18 , pursuant to Article 3, then it shall be lawful for the company or their agents, if they shall think fit so to do, to re-enter upon the said plot of ground and to take possession thereof, and of all buildings and materials whatsoever which may be thereon and in whatsoever state the same may then be, either to retain the said plot of ground, buildings, and materials for their own use, or to sell the same or any part thereof by public auction or private contract, and to retain the produce of such sales for their absolute use, and to execute all such assurances as may be necessary for carrying into effect any such sale; and upon any sale purporting to be made under this clause, the purchaser shall not be bound to see whether either of the cases mentioned herein as authorising a sale has taken place, and in any case the purchaser under this agreement shall not be entitled to any compensation or allowance whatever for labour, materials, or otherwise, except so far as the company shall in their unfettered and absolute discretion think fit to allow the same.

(5.) When and so soon as the architect shall have given his written certificate that the buildings agreed to be built

are completed and made fit for occupation to his satisfaction, the purchasers shall be entitled to, and will accept a conveyance of, the plot of ground and buildings erected thereon upon the terms herein mentioned, and shall duly execute a duplicate or counterpart thereof. Form 3.

(6.) The conveyance shall contain the following covenants by the purchasers (that is to say): To pay the said yearly rent and all taxes, rates, and assessments whatsoever (except the property or income tax payable in respect of the rent); to repair and keep in repair the said buildings to be erected, and the drains and sewers of and belonging to the same respectively, except so far as the same may be repaired under any statutory provisions applicable thereto; to insure and keep insured the said buildings in a sum equal to two-thirds of the value thereof in a well-established fire insurance office, and to produce the policy or policies and the receipts for such insurance when required, and in case of damage by fire or otherwise to rebuild and reinstate the said buildings within one year after any such damage shall have occurred; to permit the company, their successors or assigns, or their agent or surveyor, to enter upon the said plot of ground and buildings at all reasonable hours in the day-time when considered necessary for the purpose of inspecting the state of repair, and to repair, within months after notice, all defects in repair then found; not to erect any building upon the said plot of ground other than the buildings hereby agreed to be built thereon without the previous consent of the company, their successors or assigns; that the boundary walls shall be used as party walls by any person or persons building upon the adjoining plots of ground, he and they paying a proportionate part of the expense of keeping such boundary walls in proper repair, and that no boundary wall in the said plot of ground shall be carried higher than feet from the ground floor of the said buildings; to construct and maintain all necessary and proper drains, sinks, gutters, gratings, and openings, and not to carry or permit to be

Form 3. carried on upon the premises any noxious trade or business whatsoever.

(7.) The conveyance shall also contain a power of re-entry by the company in case the rent-charge, or any part thereof, shall be in arrear for one year, or in case of breach by the purchasers, their heirs or assigns, of any covenants and provisions which, in conformity with the terms of the 5th clause of this agreement, shall be contained in the conveyance.

(8.) The conveyance shall contain a covenant by the company that they have not encumbered, and the usual qualified covenant for the production of such deeds and muniments of title as are in their custody or power; but the purchasers shall not be entitled to require the company to give covenants for title.

(9.) If the purchasers, their heirs or assigns, at any time within the period of five years from the date of this agreement, shall be desirous of purchasing the said annual rent-charge, and shall give notice in writing of such his or their desire to the secretary for the timebeing of the company, then the said company shall execute a proper release of the said rent-charge of £ per annum upon payment of the sum of £ , together with all arrears of rent, whether due or accruing, and thereupon this agreement shall cease and determine.

As witness the hands of the said parties.

Agreement for Easement. Light and Air.

Form 4. An agreement, made the day of , 18 , between the Company (hereinafter called "the company"), of the one part, and , of the other part: witnesseth, and they the company and the said mutually agree as follows:

(1.) That the company will permit the said

to enjoy, without obstruction, the light and air appurtenant Form 4.
to the premises of the said company, at the

, and , now
opened in the wall of the of the
said , which said
and , overlook the
of the said company, and are shown on the plan hereunto
annexed, and thereupon coloured .

(2.) That so long as the said continues
to enjoy the permission aforesaid, he will pay unto the
said company, their successors and assigns, the sum of
, on the day of
in every year, the first payment to be made on the
day of , 18 .

(3.) That the said company, their successors or assigns,
shall at any time hereafter be at liberty to withdraw the
said permission to enjoy the light and air at the

, and aforesaid, giving
months' notice, in writing, to the said
, his heirs or assigns, which notice may be
given at any time, and on the expiration thereof the said
privilege shall absolutely cease and determine, and the
company shall be reinstated in all their former rights in
respect thereof.

(4.) In witness whereof, the said hath
hereunto set his hand and seal, and the said company
hereto have caused their common seal to be affixed the
day and year first above written.

Passed under the common seal of the above-named
company, in the presence of .

*Agreement for Payment by Instalments in a Case of
Defective Title.*

An agreement, made this day of , 18 , Form 5.

Form 5. between _____, of _____, Company, of the one part, and the _____, in of the other part, the said _____, consideration of _____, paid to _____ by the said company on the signing hereof, and of the further payment hereafter agreed to be made by the said company to _____, doth hereby agree to, and doth hereby assign to the said company, with immediate possession thereof, all estate and interest (being the residue of a term which will expire on the _____, 18) of and in the hereditaments described by a _____ colour on the plan hereunto annexed, and distinguished by the Nos. _____, which said premises are situate in _____, in _____ aforesaid. And the said company hereby agree, during the residue of the said term, so long as they shall continue in undisturbed possession of the interest of the said _____ aforesaid, to pay to the said _____, on the _____ day of _____ now next, the sum of £ _____, and the further sum of £ _____, on the _____ day of _____ then next, and the like sum on the _____ day of _____, and the _____ respectively, then following the last of such payments, being on the _____, 18 , on the expiration of the said term.

In witness whereof, the said _____ hath hereunto set _____ hand and seal, and the said company have caused their common seal to be hereunto affixed the day and year first above written.

Agreement for Sale at a Price to be settled by a Single Arbitrator. Waiver of Objection to such Arbitrator.

Form 6. Articles of agreement, made and entered into the day of _____, 18 , between _____, of _____, in the county of _____, of the one part, and the _____ Company (hereinafter called "the company"), of the other part.

Whereas the said _____ has agreed to sell, and the _____ company have agreed to purchase, the land and buildings delineated on the plan hereto annexed, and thereon edged _____ Form 6.

. Now these presents witness, that the said _____ and the company do hereby mutually covenant and agree with each other as follows:—

(1.) The said _____ shall sell and convey to the company, for the consideration in money to be ascertained as next hereinafter provided, the freehold in possession of, and in the said piece of land and buildings thereon, situate on the _____ side of _____, containing _____ square yards or thereabouts, delineated upon the said plan hereto annexed and edged _____.

(2.) The consideration in money to be paid by the company to the said _____ for the purchase of the fee simple in possession, free from encumbrances, of and in the said land and buildings, shall be determined by the award of _____, of _____, in pursuance of his appointment as a single arbitrator next hereinafter contained, and in which the said _____ and the company concur; and the said parties respectively do hereby waive any objection to the said arbitrator by reason of his being a shareholder of the said company.

(3.) The said _____ and the company do therefore, by virtue and in exercise of the provisions of the Lands Clauses Consolidation Act, 1845, and of all other powers and authorities, enabling them respectively hereby to nominate, constitute, and appoint the said _____

to be the single arbitrator, to whom the consideration in money to be paid by the company for the said piece of land and building shall be referred, and also for all the purposes aforesaid, and all matters and things before provided and mentioned; and it is agreed that all the provisions in the Lands Clauses Consolidation Act aforesaid contained, and applicable in that behalf, shall extend and apply to, and shall be observed with regard to the arbitration agreed upon by these presents.

Form 6. (4.) That the said _____ and the company, and their heirs and assigns and successors respectively, shall and will respectively obey, abide by, observe, and perform the award to be made by the said arbitrator, in the premises and in conformity with these presents, provided that such award be made in writing under the hand of the said arbitrator, and delivered to the said _____ on or before the _____ day of _____, 18 ____.

In witness whereof, the said _____ hath set his hand and seal, and the company have hereto affixed their common seal, and the secretary of the said company has hereto set his hand, the day and year hereinbefore written.

Agreement for Sale of Mines.

Form 7. Memorandum of agreement, made the _____ day of _____, 18____, between _____, of _____ (hereinafter called "the vendor"), of the one part, and the _____ Company (hereinafter called "the said company"), of the other part. Whereby the said _____, as the owner of the mines and minerals lying under the plot of land hereinafter described, agrees to sell to the said company, who agree to purchase at the price of £_____, and upon the conditions hereinafter contained, All that bed of coal called the _____, lying and being within and under all that parcel of land situate in the parish of _____, in the county of _____, containing by superficial measurement _____, all which said mines are more particularly delineated and shown on the plan hereto annexed and thereon coloured _____.

The purchase shall be completed, and the purchase money paid on the _____ day of _____, 18____, and any purchase money then unpaid shall bear interest at four per cent. per annum from that day until paid.

Form 8.

, lying and being

in and under, All

The purchase shall be completed and the purchase money paid on the day of , 18 , and any purchase money then unpaid shall bear interest at four per cent. per annum from that day until paid.

On payment of the purchase money together with any interest which may be due thereon as aforesaid, the vendors and other necessary parties shall execute all proper conveyances of the said mines to the said company.

The said vendors shall be entitled to retain all deeds which do not exclusively relate to the mines and minerals hereby agreed to be sold, but shall enter into the usual covenant for the production of them.

The company shall pay the vendors' costs of their solicitor for preparing this agreement, and of and incident to the investigation of the title and execution of the conveyances in pursuance therefore, and also a fee of for their surveyor.

*Agreement for Sale of Land for Piers of Arches.*Form 9.

Memorandum of agreement, made this

day , 18 , between

(hereinafter called "the vendor"), of the one part, and , of , in the

county of , as agent for and on behalf of the Company

(hereinafter called "the purchasers"), of the other part.

(1.) By virtue of the powers and subject to the provisions the

the vendor agrees to sell (notwithstanding anything to the contrary in the said Act contained), and the purchasers agree to purchase, for the sum of £ , the freehold and inheritance in fee simple of and in all those pieces or parcels, and blocks of land, containing by admea-

surement or thereabouts, situate Form 9.
 in the parish of , in the county of
 , particularized or referred to in
 the 1st Schedule hereunder written, and delineated on the
 plan attached hereto, and therein distinguished as to the
 pieces or parcels of land by , and as to the said
 blocks by colours, together with all
 rights and interests in the said several pieces, parcels, and
 blocks of land (except mines and minerals, and tenants'
 interest), free from encumbrances, except tithes and land
 tax (if any), for the purposes of the (*undertaking*) and the
 works connected therewith, such sum to include full com-
 pensation for the value thereof, and for all damage sus-
 tained by the vendor by reason of the severing of the
 property purchased from the vendor's other property by
 the exercise of the powers of the said Acts, and also for
 the right of pre-emption of the said lands and premises,
 or any part thereof, in the event of the same becoming
 superfluous land, and to be in full satisfaction of all
 bridges or ways (if any), either over, under, or across the
 said railway, except such as are hereby specially provided
 for.

(2.) The vendor, for the consideration aforesaid, further
 agrees to grant, and the purchasers to purchase, full right
 and liberty for themselves and others authorised by them
 to construct the necessary arches and upper portion of their
 railway works over the land remaining the property of the
 vendor, lying between the said blocks of land coloured
 on the said plan, and to maintain the same in
 good condition and repair, and with liberty so to construct
 and maintain the said arches and upper portions of
 the railway works aforesaid, that the same may project
 beyond the limits of the said blocks or plots of land over
 the land remaining the property of the vendor, his succes-
 sors and assigns, to any extent not exceeding
 feet on each side thereof; and also full right and liberty to
 maintain the footing of each pier when constructed; and

Form 9. also full and free liberty and power for the said purchasers, at all reasonable times, with surveyors, workmen, horses, carts, and waggons, to enter into and upon so much and such part or parts of the residue of the lands belonging to the said vendor as adjoin the said blocks of land as may be requisite or necessary for the purpose of constructing, and from time to time maintaining and repairing, the said arches and the works connected therewith, the said purchasers from time to time making full compensation and satisfaction to the said vendor for all damage or injury which may be done or occasioned to the said lands other than the blocks of land hereby agreed to be purchased, or any erections, buildings, or other property or works for the time being standing or being thereon by or by reason, or in consequence, of the exercise of the liberty, power, or authority hereby agreed to be granted, or any of them, except that the purchasers shall not pay any compensation by reason of the first construction of the said railway; and also the full and free right, liberty, and power to construct, maintain, and use a bridge for the purpose of carrying their railway over the occupation road, No. on the said plan, and for the purposes last aforesaid, as well as that hereinafter mentioned, full and free right, liberty, and power for the said purchasers, at all reasonable times, with servants, workmen, horses, carts, waggons, and other vehicles to enter into and upon so much of the said occupation road as is distinguished by a colour on the said plan, and to lower the level thereof so as give a clear headway for their bridge of not less than feet: Provided, nevertheless, that in so doing they shall not make the said road in any part of steeper inclination than on the south side of the railway, and on the north side thereof.

(3.) The vendor hereby undertakes, within days from the date hereof, at the expense of the purchasers, to deliver to their solicitor an abstract of title of the lands and premises, and produce the deeds and muniments of

title and other evidences in proof of the same, but to such extent as the solicitor of the purchasers shall require, and not further, and the vendor and all other necessary parties shall and will make and execute all proper and necessary conveyances to the purchasers as they shall require of the said lands and premises, with covenants for title and for production of deeds, or other evidences not handed over to them according to the usual practice on purchase of land. Form 9.

(4.) The said purchase shall be completed, and the said purchase and compensation money shall be paid to the vendor, or as provided by the said Acts, on or before the day of next, on which day the purchasers shall be entitled to possession of the estate of the vendor in the said land; but if from any cause the purchase shall not be completed, nor the purchase and compensation money paid on that day, then the purchasers shall pay interest for the same at the rate of £ per centum per annum from that day to the day of payment: Provided, nevertheless, that the purchasers shall be at liberty to take possession at any time hereafter of the estate of the vendor in the said lands, and in that case the purchasers shall pay to the vendor interest at the rate of £ per centum per annum on such purchase, and compensation money from the time of their taking possession until payment thereof; and the purchasers shall, if required by the vendor, before taking possession of the said lands, deposit the amount of purchase and compensation money at the Bank of , in the joint names of the vendor and the secretary for the timebeing of the purchasers.

(5.) The land tax and rent-charge, in lieu of tithes (if any), shall, at the expense of the purchasers, be apportioned between the land sold to the purchasers and the remainder of the estate of the vendor charged therewith.

(6.) The purchasers shall pay to the vendor the reasonable expenses of and incident to the negotiation of the said purchase and completing the agreement, in addition to

Form 9. such costs as he shall be entitled to under the provisions of the Lands Clauses Consolidated Act, 1845.

As witness, &c.

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO.

Parish.	Number on Plan.	Description of Property.	Quantity Purchased.
			a. r. p.

THE SECOND SCHEDULE HEREINBEFORE REFERRED TO.

Parish.	Number on Plan.	Description of Property.	Quantity Purchased.
			a. r. p.

Agreement for Compensation for Injurious Affecting Land.

Form 10. Memorandum, I _____, of _____,
and I, _____, of _____,
on behalf of the _____ Company,
hereby agree as follows:—

The said company shall pay the sum of £ _____ as and
for all such compensation as the owner of the _____
shall be entitled to under the powers
of the (*special Act*) for the damage caused to the _____
by the stopping up of _____;
and such owner shall, at the expense of the company if
required, deduce a good title to such estate.

The said compensation shall be paid on the
day of _____; but if from any cause the same shall
not then be paid, interest at the rate of _____ per cent. per
annum shall be paid upon the amount of the said com-

pensation from the _____ day of _____ Form 10.
to the day of payment thereof.

As witness the hands of the said parties this
day of _____ 18 ____ .

Agreement for Construction of Bridge.

An agreement, made this _____ day of _____, 18 __, Form 11.
between the _____ Company
(hereinafter called "the company"), of the one part,
and _____, of the other part:
Whereas the company under the powers of (*special Act*)
are authorised and empowered to construct a certain
undertaking and works, known as _____,
which undertaking is intended to cross over the property
of the said _____,
in _____, and
for the purposes of such undertaking the
also require to purchase and take certain lands belonging
to the said _____. Now it is hereby agreed
between the said parties hereto as follows:—

(1.) That the company shall, in consideration of the pay-
ment of £ _____, and of the grant and conveyance to
them by the said _____, hereinafter mentioned,
grant and convey unto the said _____ his heirs and
assigns, all those several pieces or parcels of land, heredita-
ments, and premises, situate in the parish of _____,
in the county of _____, containing together
by admeasurement _____ or thereabouts,
which said pieces of land and hereditaments are delineated
on the plan hereto annexed, and thereon coloured _____,
and are parts of certain closes of land and hereditaments
shown and delineated on the maps or plans relating to the
_____ and works authorised to be made and
executed by the first before-mentioned Act, deposited with
the clerk of the peace for the county of _____;
one of such closes being No. _____, in the parish of _____

Form 11.

, on such last-mentioned plans,
and the other of such closes being numbered
on such plans.

(2.) That the said shall grant and convey
unto the company and their successors, all those several
pieces or parcels of land and hereditaments, situate in the
parish of aforesaid, containing together
by admeasurement or thereabouts, which
said last-mentioned pieces of land are delineated on the
said plan thereto annexed, and thereon coloured ,
and are parts of certain closes, pieces, or parcels of land
numbered respectively on the before-mentioned maps
and plans relating to the said and works, deposited
with the clerk of the peace for the county of .

(3.) That each of the said parties hereto shall, within
days from the date hereof, deliver to the other of
them, or their solicitor, an abstract commencing with the
conveyance to the company and the said
respectively, of the land and hereditaments, and premises
agreed to be conveyed by them.

(4.) That neither party shall be entitled to call for the
production of, or to investigate, or to make any objection
on account of any earlier title than the said deeds of
conveyance to them respectively, and such deeds shall be
deemed conclusive evidence of the facts and matters therein
recited or stated.

(5.) That if both parties shall deduce a good title to
the said lands, hereditaments, and premises, then the said
respective conveyances shall be completed so soon as the
assurances have been prepared and executed by all ne-
cessary parties.

(6.) That the company shall, on the payment of the
£ hereinbefore mentioned, permit the said
his heirs and assigns, forthwith to build, erect, make, and
for ever hereafter use and maintain, according to plans to
be approved by the engineers of the company, a bridge or
two bridges of feet clear span, and having a clear

headway of at least feet from level to Form 11.
soffit of girders over part of the line of
the company, in the parish of ,
at the points marked on the said plan hereto
annexed, or as near thereto as circumstances will permit,
and for that purpose will permit and allow the said
his heirs and assigns, and their contractors,
engineers, surveyors, workmen, and other persons, but not
so as to obstruct or interfere with the traffic of the com-
pany, to enter upon the premises of the said company at
the said two points marked on such plan, and
upon such other parts of the premises of the said company
adjoining such points as may be necessary to enable the
said to construct the said bridge or bridges,
and the works connected therewith ; and that immediately
after the completion of the said bridge or bridges to the
satisfaction of the said engineer, the company will forth-
with grant to the said his heirs and assigns,
full and free right, liberty, power, and authority for ever
thereafter to use, occupy, and enjoy the same, and by
themselves, their engineers, servants, contractors, workmen,
and other persons duly authorised to enter upon (but not
so as to obstruct or interfere with the traffic or business of
the said company) the lands coloured on
the said plan hereunto annexed, from time to time as
occasion shall require, to rebuild, repair, or amend the
same in order that such bridge or bridges may for ever
thereafter be maintained and kept in good order and
repair.

(7.) That for the purpose of constructing such bridge or
bridges the said shall erect over the said line
of the said company, at the points aforesaid, a scaffolding
or temporary wooden bridge.

(8.) That such scaffolding or temporary wooden bridge,
and the permanent bridge or bridges, and all works in
connection therewith, shall be erected in a proper and
workmanlike manner, and in accordance with the direc-

Form 11. tions and to the reasonable satisfaction in all things of the engineer for the timebeing of the company.

(9.) That the said shall give the engineer for the timebeing of the company clear days' notice of the intention to commence to erect any temporary structure, and no beams or girders shall be lifted or swung over the said line of railway without the sanction and authority of such engineer or the man he may appoint on the ground.

(10.) That nothing shall be permitted to hang or be suspended over the said line of railway of the company during the passing of any train in such manner that the traffic of the company shall be in any way obstructed or interfered with.

(11.) That during the time the work of constructing the said scaffolding and temporary bridge or bridges, and also the permanent bridge, is being carried on, the said shall and will pay to the company the wages of an extra man to be employed at the said bridge or bridges to act as signalman for the purpose of superintending and keeping the line of railway of the company clear for all traffic and free from obstruction.

(12.) That on the completion of the said permanent bridge or bridges, the said shall and will remove the said scaffoldings or temporary bridge or bridges, and leave the line of railway and property of the company clear and perfect as they now are.

(13.) That the said do and shall hereby indemnify and hold the company harmless from all accidents, losses, costs, and damages to any person or property caused by or in any way owing to, resulting from, and during the erection of the aforesaid scaffoldings, temporary or permanent bridge or bridges, and the works in connection therewith.

(14.) That the shall within calendar month from the date hereof, for the purpose of separating the property of the said from that

of the company, build, erect, make, and for ever hereafter Form 11.
maintain along the entire length of the curved line from
the point marked to the point marked on the
said plan hereto annexed, a good and sufficient boundary
wall fence, high from the surface of the
ground, to be approved by the engineer for the time being
of the company.

(15.) That the said shall at all times here-
after sufficiently repair and maintain the said bridges, and
to the satisfaction of the engineer for the time being of
the company; and if after days' reasonable
notice the said shall neglect to execute such
repairs and amendments, the company may execute the
same, and the said shall reimburse the com-
pany all expenses they may have incurred in and about
the same.

(16.) That the said shall indemnify the
company respectively from and against all claims for
injury to persons or property, or otherwise, which shall or
may be occasioned in or about the construction, main-
tenance, or defect of any of the works hereinafter provided
for, and from and against all loss, costs, and expenses
incurred in or about the same, notwithstanding the
approval, superintendence, or supervision of the engineer
of the company may from time to time have been given or
afforded.

(17.) That the said shall bear, pay, and
discharge the costs of this agreement, and all reasonable
costs and expenses which shall be incurred by the com-
pany in or about the deduction and verification of the title
to the said lands, coloured on the said plan
hereto annexed, and also the reasonable costs and expenses
of or incidental to the preparation and execution of all
conveyances and assurances, and other reasonable costs
and expenses incidental to this agreement, including
£ for surveyor's charges.

In witness whereof, &c.

Form 12.

A. R. P. or thereabouts, and more particularly delineated on the plan thereof drawn on the margin of these presents, and therein distinguished by the colour , with full power and authority to and for the the company, and their successors, agents, and servants, at all times during this demise, to dig to any depth for, and to get, take, and carry away, ballast and sand and gravel from the said land hereby demised, for their own use and benefit, except and reserving unto the lessor, his heirs and assigns, all game, conies, and wild-fowl, and the right of

shooting in and over the land and grounds hereby demised Form 12.
 unto the company; to have and to hold the said land and
 premises hereby demised unto the company and their
 successors from the day of , 18 ,
 for and during the full end and term of
 years from thence ensuing and fully to be completed and
 ended, subject nevertheless to the payment of the rents
 and performance of the covenants, conditions, stipulations,
 and agreements, and to the proviso for the sooner determi-
 nation of the said term hereinafter reserved and contained,
 yielding and paying therefor, unto the lessor, his heir,
 executors, administrators, or assigns, the sum of £ ,
 in four instalments, as follows, namely, the 1st instalment
 of £ on the execution of these presents, on pay-
 ment whereof the company shall be entitled to fence off,
 in manner hereinafter mentioned, acres of the
 said land; the 2nd instalment of £ whenever the
 company shall have fenced off, as aforesaid, a further por-
 tion of acres of the said land; and the final
 instalment of £ whenever the company shall have
 fenced off, as aforesaid, the remaining portion of the said
 land. And also yielding and paying unto the lessor, his
 heirs, executors, administrators, or assigns, the rents here-
 inafter mentioned, and the company do hereby covenant
 and agree with the lessor, his executors, administrators,
 and assigns, in manner following, that is to say, that they,
 the company, their successors or assigns, shall pay or cause
 to be paid unto the lessor, his heirs, executors, adminis-
 trators, or assigns, the said sums of £ , £ ,
 £ , and £ , on the days and time and in
 manner hereinbefore mentioned; and that they, the com-
 pany, will cause the whole of the surface soil as it is re-
 moved, in order to obtain the said ballast, sand and gravel
 from the said land, to be preserved, and at their expense
 cause the same to be replaced on the top and uniformly
 laid over the land which shall have been excavated by the
 company, and also will make good and level the said land

Form 12. progressively and as fast as the removal of the ballast, sand and gravel therefrom will admit, the slopes on all sides to be dressed down to an inclination of not less than inches in , and properly soiled over, and will pay a rent of £ per acre per annum, and so in proportion for any quantity less than one acre, to the lessor, his heirs or assigns, on the day of yearly during this demise, for all the land excavated or otherwise occupied or used by them, and which shall be fenced off as it may be required, and taken from time to time according to admeasurement, the lessor paying all rates and taxes for the said land ; and which land to be from time to time taken shall be properly and safely fenced off with posts and rails by the company ; and that the lessor, his heirs and assigns, shall be at liberty to occupy and cultivate the remainder of the said land hereby demised which shall from time to time be unoccupied by the company, whether before excavation or after excavation and levelling as aforesaid, without payment of rent or any compensation to the company for the same. And that if any such lands shall be required and taken by the company when under cropping they will also pay to the lessor, his heirs, executors, administrators, or assigns, fair and reasonable tenant's compensation for the cropping injured or destroyed ; and also that the company will at all times during the continuance of the term hereby granted make and maintain a good practical drift road for driving cattle for the lessor, his heirs and assigns, over the said land to the present occupation road, or as near thereto as may be practicable. And the lessor, for himself, his heirs, executors, administrators, and assigns, doth hereby covenant and agree with the company, their successors and assigns, that they, the company, their successors and assigns, paying the sums of money hereby made payable, and the said rents hereby reserved at the times hereinbefore appointed for payment thereof, and observing the covenants, conditions, stipulations, and agreements hereinbefore reserved and contained on their

part and behalf to be paid and observed, and performed, Form 12.
shall peaceably have, hold, occupy, possess, and enjoy the hereby demised premises, and every part thereof, together with the powers and authorities hereinbefore reserved, subject, as aforesaid, for the term hereby granted and for the purposes aforesaid, without any interruption from the lessor, or by or from any person or persons whomsoever. And also that the company will, at the expiration of the term hereby granted, or other sooner determination thereof, peaceably and quietly yield up unto the lessor, his heirs or assigns, the said land hereby demised so properly levelled, fenced, and in order, as aforesaid, according to the true intent and meaning of these presents, the company being hereby expressly exempted from all responsibility for the damage of the said land. Provided always, and it is hereby agreed and declared, that if before the expiration of the said term the whole of the ballast, sand and gravel under the said land shall have been gotten, it shall be lawful for the company, their successors or assigns, having paid the rents and sums hereby reserved and made payable, and performed and observed the several covenants and agreements herein contained up to the time of the surrender, to surrender the premises hereby demised unto the lessor, his heirs and assigns. And it is hereby further agreed and declared, that if in the opinion of the lessor, his heirs or assigns, or his or their agent, it shall be doubtful whether the company, their successors or assigns, are entitled under the provision hereinbefore contained to surrender the premises, it shall be lawful for the lessor, his heirs or assigns, by notice in writing delivered to the company, their successors or assigns, to require them to prove, at their own expense and by proper evidence, to the reasonable satisfaction of the lessor, his heirs or assigns, that the state of circumstances under which they claim to surrender the premises actually exists; and the premises shall not be surrendered until such evidence shall have been given, or if the company, their successors or assigns,

Form 12. shall require the question to be referred to arbitration, under the provision in that behalf hereinafter contained, until the arbitrators or their umpire, as the case may be, shall have made their award: Provided also, and it is hereby lastly agreed and declared, that if any doubt, difference, or dispute shall hereafter arise between the parties hereto touching these presents or the construction hereof, or any clause or thing herein contained, or any other matter in any wise relating to these presents, or the rights, duties, or liabilities of either party in connection therewith, the matter in difference shall be referred to two arbitrators, or their umpire, pursuant to and so as with regard to the mode and consequence of the reference, and in all other respects to conform to the provisions in that behalf contained in the Common Law Procedure Act, 1854, or any other subsisting statutory modification thereof; and upon every or any such reference the arbitrators or umpire shall respectively have power to examine the parties and witnesses upon oath, and to fix, settle, and determine the amount of costs of the reference and award respectively or incidental thereto to be paid by both parties or by either party or otherwise, and to direct the same to be taxed either as between solicitor and client, or as between party and party, or otherwise, and to direct and award when, and by, and to whom such costs shall be paid.

In witness, &c.

Grant of Right of Sporting.

Form 13. An agreement, made the _____ day of _____, 18____, between the _____ Company, by _____ of _____, in the county of _____, as agent for and on their behalf, of the one part, and _____, of _____, in the county of _____, of other part, whereby it is mutually agreed, as follows:—

(1.) The said company will permit the said _____,

his gamekeepers and servants duly appointed by him in Form 12.
his regular employ (but no others), to enter and come
upon the slopes and embankments of their
where the same passes through the land of the said ,
in the township of , of , in the
parishes of , in the county of , over
which the said has the right of sporting and
to trap or ferret, and by that means to destroy the rabbits
which may be found thereon.

(2.) The said , his servants and gamekeepers
aforesaid, shall not break through or injure the hedges or
fences of the said company in the exercise of the privilege
hereby granted, but shall enter the premises of the said
company at and by such bridges, level crossings, and other
means of entrance and exit as are provided by the said
company for the accommodation of their servants and the
public.

(3.) The said shall during the continuance
of this agreement pay to the said company an acknowledg-
ment of on the day of in
each year.

(4.) The said shall from time to time during
the continuance of such agreement furnish the said com-
pany with the names and addresses of the gamekeepers
and servants for the timebeing authorised by him for the
purposes aforesaid.

(5.) The said shall make good all damage
which may be sustained by the said company or their
property in consequence of the aforesaid privilege being
granted to him, and shall and will save harmless and keep
indemnified the said company from all claims and demands,
loss, costs, charges, and expenses which they, the said
company, may incur or be put to by reason of the exercise
of the privilege or permission hereby given or granted,
and especially on account of any accident which may
happen to such gamekeepers and servants as aforesaid or
to any person or persons travelling upon their .

Form 13. (6.) If the said company shall desire to put an end to this agreement and the grant hereby made, they shall be at liberty to do so at any time upon giving _____ months' notice in writing of their intention to the said _____, which notice may be under the hand of the said _____ or other the authorised officer of the said company, and may be sent through the post to the said _____, addressed to his usual or last known place of abode, and immediately upon the expiration of such notice this agreement, and every clause and thing therein contained, shall (subject and without prejudice to the rights and remedies of the said company thereunder) absolutely cease and determine.

As witness the hands of the said parties, the day and year first above written.

Nomination of Surveyors, and Certificate by them.

Form 14.

Company

and

(*landowners*).

Whereas, under and by virtue of the provisions of (*special Act*) and of the Acts of Parliament incorporated therewith, the _____ Company are authorised to purchase and take for the purpose of the said Act the hereditaments described or referred to in the schedule hereunder written, and the said company have agreed with the said (*landowners*), that the purchase money and compensation to be paid by the said company for the purchase thereof shall be the sum of £ _____. And whereas, according to the provisions contained in the Lands Clauses Consolidation Act, 1845, the same being one of the Acts incorporated with the said above-named Act, it is requisite that the purchase money and compensation to be paid for any lands taken from any party under any dis-

ability or incapacity, and not having power to sell or convey Form 14.

such lands, except under the provisions of such Acts, shall not be less than shall be determined by the valuation of two able practical surveyors, one to be nominated by the said company, the other by the said (*landowner*). Now, therefore, in pursuance of and in obedience to the directions of the said Act or Acts of Parliament in this behalf, we the

Company do hereby nominate on our behalf (*surveyor*), of , in the county of

, an able, practical surveyor, and the said (*landowner*), do hereby nominate on behalf (*surveyor*), of , in the county of

, an able, practical surveyor, for the purpose of determining by their valuation whether or not the said sum of £ , being the purchase money so agreed as aforesaid, is less than the full value of the fee simple of and in the said hereditaments and premises comprised in the said schedule, with all the appurtenances thereto belonging (except mines and minerals), including compensation for all damage or injury to be sustained by the said (*landowner*) by reason of the severing of the lands purchased from the other lands belonging to the same estate, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

Dated this day of , 18 .

Passed under the common seal of the above named Company

in the presence of

Witness to the signature of the said

THE SCHEDULE ABOVE REFERRED TO.

All the piece or parcel of land situate, lying, and being in the parish of

in the county of , containing together by admeasurement or thereabouts,

D D

Form 14. which said piece or parcel of land parcel of certain
 larger pieces of land, numbered or referred to in the plan
 and book of reference deposited at the office of the clerk
 of the peace for the county of , in
 connection with the application to Parliament for the said
 Act, with the Nos.

in the parish of

In pursuance of the foregoing nomination, we the said
 (*surveyor*), and (*surveyor*), have determined, and we do
 hereby certify, that the sum of £ is not less than
 the full value of the hereditaments and premises described
 in the schedule to the said nomination and all the appur-
 tenances thereunto belonging (except mines and minerals),
 in fee simple, in possession, free from encumbrances,
 including compensation for all damage or injury to be sus-
 tained by the said (*landowner*) by reason of the severing of
 the land purchased from the said other lands, or otherwise
 injuriously affecting such other lands by the exercise of
 the powers of the (*special Act*). And we declare this our
 valuation to be correct.

In witness whereof we have hereunto set our hands
 this day of , 18 .

Witness to the signature of the said (*surveyor*).

Witness to the signature of the said (*surveyor*).

Valuation by two Surveyors, under Section 9.

Form 15. Whereas we, the undersigned of
 Recital of surveyor, and of surveyor, have, by a
 appoint- certain instrument of appointment hereto annexed, been
 ment. nominated to determine by our valuation the matters
 Determi- therein mentioned. Now we, the undersigned, do by this
 nation of our valuation, made in pursuance of the said appointment,
 value. determine the sum to be paid by the said company for the
 purchase of the estate and interest as stated in the said
 appointment of and in the land, in the parish of , in

the county of _____, described in the schedule there- Form 15.
 under written, and for compensation for any permanent
 damage or injury to the other land and hereditaments
 adjoining, or near thereto as aforesaid, of or to which the
 said (*landowner*) is seised or entitled, to be the sum
 of £

Given under our hands this _____ day of _____

*Notice of Intention to take Lands for Temporary
 Purposes (Roads).*

(*Title of undertaking.*)

Form 16.

You are requested to take notice that, under and by Power to
take.
 virtue of (*special Act*), and the Acts therewith incorporated,
 the _____ Company require, and are authorised to
 enter upon, and accordingly intend to enter upon and take
 temporary possession for the purpose of making roads

the piece or parcel of land, situate in the parish of _____ of all Descrip-
tion of
land.
 _____, in the county of _____,

containing by admeasurement
 or thereabouts, and being part of a larger piece of land,
 defined and described in the plans of the works authorised
 by the said Act, deposited at the office of the clerk of the
 peace for the said county of _____, with the number
 _____ in the said parish of _____, and for the better
 description of the piece of land so required as aforesaid,
 the same is delineated on the plan attached hereto,
 and therein coloured _____, which said piece of land so
 required as aforesaid belongs, or is reputed to belong, to
 you or some or one of you, or some or one of you have or
 hath, or claim or claims, some estate, share, interest, or
 charge in, over, or affecting the same or some part thereof.
 And it is by the Railways Clauses Consolidation Act, 1845,
 provided, that in all cases where the company shall take

Form 16. temporary possession of land by virtue of the powers therein, or in the special Act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands; and shall also from time to time, during their occupation of the said lands, pay half yearly to such occupier, or to the owner of the lands, as the case may require, a rent to be fixed by two justices, in case the parties differ, and shall also within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special Act limited for the completion of the works, pay to such owner and occupier, or deposit in the Bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise as regards the said lands of the powers therein, or in the special Act granted, and that the amount and application of the compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

Compensa-
tion.

Dated this day of , one
thousand eight hundred and

(Signed)

Secretary of the said company.

To

and all persons having or claiming
any estate or interest in the said
land.

*Notice of Intention to take Lands for Temporary
Purposes.*

(This is not applicable to roads.)

Form 17.

Railway

You are hereby requested to take notice that under and by virtue of the Act, 18 (hereinafter called "the special Act"), and the Acts therewith incorporated, the Company are authorised to enter upon and take, and accordingly intend to enter upon and take, temporary possession for the purpose of (*insert shortly the purpose*), of all that piece or parcel of land, situate, &c., containing by admeasurement, &c., or thereabouts, and being parcel of a larger piece of land, defined and described in the plans of the said (*undertaking*), authorised by the said special Act, deposited at the office of the clerk of the peace for the said county of , with the No. , in the said parish; and for the better description of the piece of land so required as aforesaid, the same is delineated on the plan attached hereto, and thereon coloured , which said piece of land so required as aforesaid belongs, or is reputed to belong, to you, or you have or claim some estate, share, interest, or charge in, over, or affecting the same or some part thereof. And it is by the Railways Clauses Consolidation Act, 1845, provided, that in all cases where the company shall, in the exercise of the powers aforesaid, enter upon any lands for the purpose of depositing spoil thereon, or other purposes, as in the said Act mentioned, it shall be lawful for the owners or occupiers of such land, or parties having such estates or interests therein as under the provisions in the Lands Clauses Consolidation Act, 1845, mentioned, would enable them to sell or convey lands to the company, and before such owners or occupiers shall have accepted compensation from the company in respect of such temporary occupation, to serve a notice in writing on the company requiring

Power to
take.

Descrip-
tion of
land.

Power to
landowner
to sell.

Form 17. them to purchase the said lands or the estates and interests therein capable of being sold and conveyed by them respectively, and in such notice such owners or occupiers shall set forth the particulars of such, their estate or interest in such lands, and the amount of their claim in respect thereof; and the company shall thereupon be bound to purchase the said lands or the estate and interest therein capable of being sold and conveyed by the parties serving such notice. And it is by the said Railways Clauses Consolidation Act, 1845, also provided (*proceed as in preceding form*).

Notice of Intention to Underpin.

Form 18.

(Title of undertaking.)

In pursuance of the provisions of (*special Act*), the Company do hereby give you notice that they intend, at the expiration of days from the service hereof, to underpin or otherwise strengthen the house and buildings belonging to you, or in which you have or claim to have an estate or interest, situate and being No. , in the of .

Dated this day of , 18 .

(Signature)

Secretary.

To Mr.

To Mr.

The of the said premises, and all other persons being or claiming to be the owner or occupier of the same premises.

*Notice to Treat and Agree.**(Title of undertaking.)***Form 19.**

In pursuance of the provisions of (*special Act*), and of the several provisions of the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Act Amendment Act, 1860, respectively, incorporated therewith, the

Company do hereby give you notice that they require to purchase or take all the lands and hereditaments of which the particulars are contained in the schedule hereto, with the appurtenances, and which said lands and hereditaments so required as aforesaid are for the better description thereof delineated on the plan attached hereto, or delivered herewith, and are thereon distinguished by a colour, and which lands and hereditaments the said company are authorised to purchase or take.

And the said company further give you notice that they are willing to treat with you for the purchase of the lands and hereditaments so required as aforesaid, with the appurtenances, and as to the compensation to be made to you for the damage that may be sustained by you by reason of the execution of the works of the said undertaking.

And the said company do hereby demand from you the particulars of your estate and interest in the lands and hereditaments so required as aforesaid, and of the claims made by you in respect thereof.

And the said company, in case you, having a greater interest therein than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of the lands or hereditaments so required as aforesaid, do hereby require you to produce the lease or grant in respect of which such claim is made, or the best evidence thereof in your power.

Dated this day of , 18 .

Form 19. To (*landowner*) and to all persons having
or claiming any estate or interest in the said
lands and hereditaments.

(*Signature.*)

Secretary of the said company.

Note.—Having reference to the lands specified in the
within notice by the 21st section of the Lands Clauses
Consolidation Act, 1845, it is enacted as follows :—

(*Copy section 21.*)

And by the 122nd section of such Act it is enacted as
follows :—

(*Copy section 122.*)

Notice to Treat.

(
Form 20.

(*Insert title of special Act.*)
)

The _____ Company, incorporated by Act of
Parliament, passed in the session holden in the
and _____ years of the reign of Her present Majesty,
Queen Victoria, intituled (*title of Act incorporating the
company*), do hereby give you notice that they require to
purchase and take under the powers of (*insert short title
of special Act under which the lands are taken*), and of
the public Acts incorporated therewith, and of any other
Acts them thereunto authorising, so much of the land and
hereditaments (described or referred to in the map or plan
and book of reference stated in the said last-mentioned
Act to have been deposited with the clerk of the peace
for the county of _____) as is delineated on the
plan attached hereto, and thereon distinguished by a
colour, a description of which said land and hereditaments
as described or referred to in the said book of reference is

set out or intended so to be in the schedule hereto annexed, **Form 30.**
but such schedule is intended only for the more easy distinguishing of such lands, and not in any way to control or diminish the description or delineation by a colour on the plan attached hereto; and that the said company are willing to treat with you and every of you for the purchase of the lands and hereditaments so required as aforesaid, with the appurtenances, and as to the compensation to be made to you and every of you for the damage that may be sustained by you and every of you by reason of the execution of the works authorised by the secondly mentioned Act. And the said company do hereby demand from you, and each and every of you, the particulars of your respective estates and interests in the lands and hereditaments so required as aforesaid, together with all charges and interests to which the same is subject, and of the claims made by you and each of you in respect thereof.

And the said company do hereby further give you notice that if for twenty-one days after the service hereof you shall fail to state the particulars of your respective claims in respect of the lands and hereditaments so required as aforesaid, or to treat with the said company in respect thereof, or if you or any of you respectively and the said company shall not agree as to the amount of compensation to be paid by the said company for or in respect of your respective interests in the premises so required, or the interest therein which you respectively are by the said secondly mentioned Act, or the Acts incorporated therewith, enabled to sell, or for any damage that may be sustained by you respectively, by reason of the execution of works authorised by the said secondly mentioned Act, the said company will forthwith proceed to require the amount of such compensation to be settled in manner directed by the Lands Clauses Consolidation Act, 1845, for settling cases of disputed compensation.

Dated this day of , 18 .

Form 20. To

and to all persons having or claiming any
estate or interest in the said lands and
hereditaments.

Secretary of the said company.

THE SCHEDULE ABOVE REFERRED TO.

Parish or Place and County in which the Lands and Heredita- ments are situate.	No. on Map or Plan, and in Book of Reference deposited with the Clerk of the Peace for the County of	Description of Property.

*Notice to Treat for Easement.***Form 21.**

The Company.
The Company,
incorporated by an Act of Parliament passed in the session
holden in the years of the reign of
Majesty, intituled (*special Act*),
and of the public Acts incorporated therewith, and of any
other Acts them thereunto authorising, require to take
certain easements or rights specified in the first schedule
hereto of using so much of the land or grounds or heredita-
ments (described or referred to in the map or plan and
book of reference mentioned in the said Act to have been
deposited with the clerk of the peace for the county of
, as is delineated on the plan attached hereto,
and thereon distinguished by a colour, a
description of which said lands and hereditaments as
described or referred to in the said book of reference is set

out or is intended only for the more easy distinguishing of Form 21.
such lands, and not in any way to control or diminish the
description or delineation by a colour on the
plan attached hereto, and that the said company are
willing to treat with you and every of you for the purchase
of the said easement or right of using the land and heredita-
ments aforesaid, and as to the compensation to be made
to you and every of you for the damage that may be
sustained by you and every of you by reason of the execu-
tion of the works authorised by the said Act.

And the said company do hereby demand from you and
each and every of you the particulars of your respective
estates and interests in the lands and hereditaments over
which such easement and right of user is so required as
aforesaid, together with all charges and interests to which
the same is subject, and of the claims made by you and
each of you in respect thereof.

Dated this day of , 18 .

To

and to all persons having or claiming
any estate or interest in the said lands
and hereditaments.

Secretary to the said company.

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO.

The following are the purposes for which the within-
named easements and rights of user will be required :—

THE SECOND SCHEDULE HEREINBEFORE REFERRED TO.

Parish or Place and County in which the Lands and Heredita- ments required are situate.	No. on Map or Plan and in Book of Refer- ence deposited with the Clerk of the Peace for the County of	Description of Property.

*Notice to Treat for severed Portion of less Value than
Cost of making Communication.*

Form 22.

(*Special Act.*)

Whereas the _____ Company,
incorporated by an Act of Parliament passed in the
session holden in the _____ years of the reign of
_____ Majesty _____, intituled
(*special Act*), did by a certain instrument under the hand
of their secretary, the service whereof was accepted by
you, give you notice that they required to purchase and
take under the provisions of the (*special Act*), and of the
public Acts incorporated therewith, certain land and
hereditaments, described on the plan attached thereto, and
thereon distinguished by a _____ colour, and that the
said company were willing to treat with you and every of
you for the purchase of the lands and hereditaments so
required as aforesaid, with the appurtenances, and as to
the compensation to be made to you by virtue of the said
Acts. And the said company did thereby demand from
you and each and every of you the particulars of your
respective estates and interests in the lands and heredita-
ments so required as aforesaid, together with all charges
and interests to which the same was subject, and of the
claims made by you and each of you in respect thereof.
And whereas by your schedule of claim duly delivered to
the said company you demand or otherwise make your
claim to compensation in respect of the lands and heredita-
ments aforesaid, subject to a condition that a right of way
over the line, as well for the removal of the growing
timber and underwood, and for all other purposes upon the
land completing the angle, is reserved to yourself, friends,
and agents. And whereas, upon the treaty for such pur-
chase and payment of compensation as aforesaid, it appeared
that such right of way as was demanded in your schedule

of claim hereinbefore mentioned was a communication **Form 22.** between your lands on either side of the land and hereditaments comprised in the hereinbefore firstly recited notice, and that the piece of land on the side thereof, forming the angle referred to in your hereinbefore mentioned schedule of claim, contained a. r. p., of land or thereabouts, the value of which said angle or piece of land is estimated by the said company as greatly less than the expense of constructing the communication so required as aforesaid. Now, therefore, the said

Company do hereby give you notice that they require to purchase and take under the powers of the Lands Clauses Consolidation Act, 1845, with which the (*special Act*) is incorporated, the land and hereditaments situate in the parish of , in the county of , described on the plan attached hereto, and thereon distinguished by a colour, which piece of land and hereditaments form the angle mentioned in your schedule of claim hereinbefore mentioned; and the company give you further notice that they are willing to treat with you and every of you for the purchase of the land and hereditaments so required as aforesaid, with the appurtenances, and as to the compensation to be made to you and every of you for the damage that may be sustained by you and every of you by reason of the execution of the works authorised by the said Act. And the said company do hereby demand from you and each and every of you the particulars of your respective estates and interests in the land and hereditaments so required as aforesaid, together with all charges and interests to which the same is subject, and of the claims made by you and each of you in respect thereof. And the said company do hereby further give you notice that if for days after the service hereof you fail to state the particulars of your respective claims in respect of the land and hereditaments so required as aforesaid, or to treat with the said company in respect thereof, or if

Form 23. you or any of you respectively and the said company shall not agree as to the amount of compensation to be paid by the said company for or in respect of your respective interests in the premises so required, or the interest therein, which you respectively are, by the said secondly mentioned Act or the Acts incorporated therewith, enabled to sell, or for any damage that may be sustained by you respectively by reason of the execution of the works authorised by the said secondly mentioned Act, the said company will forthwith proceed to require the amount of such compensation to be settled in manner directed by the Lands Clauses Consolidation Act, 1845, for settling cases of disputed compensation.

Dated this day of , 18 .

To

and to all persons having or claiming
any estate or interest in the said lands
and hereditaments.

Secretary to the said company.

THE SCHEDULE ABOVE REFERRED TO.

Parish or Place and County in which the Lands and Hereditaments required are situate.	No. on Map or Plan and in Book of Reference deposited with the Clerk of the Peace for the County of	Description of the Lands and Hereditaments required.

Notice to Company, under Section 92 of the Lands Clauses Consolidation Act, 1845.

Form 23. To

The
We the undersigned

Company.
and

, both of _____, Form 23.

in the county of _____,
 in pursuance of the provisions of the Lands Clauses Consolidation Act, 1845, do hereby give notice that the land, buildings, and premises mentioned and comprised in the notice to treat, dated the _____ day of _____, 18____, which has been served by you upon us, are part only of the land, buildings, and premises of which we are the owners in fee simple, and we further give you notice that we are able and willing to sell and convey to you the whole of the said land, buildings, and premises of which we are such owners, and which are shown on the plan attached hereto, and we further require you to purchase and take the whole of the said land, buildings, and premises.

Witness our hands this _____ day of _____
 18____.

(Signed)

(Signed)

*Withdrawal of Notice to Treat and Substitution of
 Fresh Notice.*

(*Special Act.*)

Form 24.

Whereas by an instrument in writing under the hand of the undersigned _____, the secretary of the _____ Company (hereinafter called "the company)," dated the _____ day of _____, 18____, the company gave you the _____ notice that they required to purchase and take under the powers of the (*special Act*) and of the public Acts incorporated therewith, and of any other Acts them thereunto authorising, certain land, ground, and hereditaments, situate in the parish of _____, in the county of _____, which were delineated on the plan attached thereto, and thereon

Form 24. distinguished by a colour, a description of which said lands and hereditaments was set out in the schedule thereto annexed, and that the company were willing to treat with you for the purchase of the lands and hereditaments so required as aforesaid, with the appurtenances, and as to the compensation to be made to you for the damage that might be sustained by you by reason of the execution of the works authorised by the above first-mentioned Act. And whereas the said notice was served upon you, the said , on the

 day of 18 .

And whereas the company have been advised that they have no power to purchase, and that you, the said

 have no power to sell certain portions of the lands and hereditaments comprised in such notice of the day of , 18 .

Now, therefore, the company hereby give you notice that they hereby withdraw the said last-mentioned notice, and substitute the accompanying notices, No. , respectively, in its stead.

Dated this day of 18 .

To

Secretary of the said company.

Notice of Intention to apply to Justices to correct Mistake in Plan.

Form 25. Sir,

The Company, in pursuance of the powers of the (*special Act*), and of the Railways Clauses Consolidation Act, 1845, do hereby give you notice that it is their intention, after the expiration of days from the service of this notice upon you, on , the day of inst., at the hour of at , to apply to two justices of the peace for the county of

, sitting at the , Form 25.
in the borough of , being a place
constituted under the Petty Sessions and Lockup Houses
Act, 1868, for holding petty sessions for the division of
, in the said county of
, in which division the parish of
hereinafter mentioned is situate,
for the correction of so much of the plan of the
and book of reference thereto,
as are by the firstly mentioned Act stated to have been
deposited with the clerk of the peace for the county of
, as relates to the lands erroneously
described on such plan, and in such book of reference, by
the No. , in the parish of
in the said county, and as belonging to
and his trustees and
as owners or reputed owners thereof; but which lands are
in fact situate in the parish of
in the same county, and belong to you as owner or reputed
owner of the freehold in fee thereof. And further the
said company will, after the expiration of such
days as aforesaid, apply to such two justices to certify that
the said lands have been erroneously described as afore-
said, that their certificate may be deposited with the clerk
of the peace for the said county, and with the clerk of the
parish in which such lands are situate, along with the
other documents to which they relate to the intent that
such plan and book of reference may be deemed to be
corrected, as provided by the hereinbefore mentioned
Railway Clauses Consolidation Act, 1845.

Dated this day of , 18 .

Secretary to the (company).

To

*Notice withdrawing Notice to Treat and substituting
Fresh Notice.*

Form 26.

Company.

The Company, incorporated
by an Act of Parliament passed in the session holden in
the years of the reign of
Majesty , intituled (*special Act*),
do hereby give you notice that they require to purchase
and to take under the powers of (*special Act*), and of the
public Acts incorporated therewith, and of any other Acts
them thereunto authorising, so much of the land or
grounds and hereditaments, described or referred to in the
map or plan and book of reference mentioned in the said
secondly mentioned Act to have been deposited with the
clerk of the peace for the county of ,
as is delineated on the plan attached hereto and thereon
distinguished by a colour, and description
of which said lands and hereditaments as described or
referred to in the said book of reference, is set out, or is
intended as to be in the schedule hereto annexed, but
such schedule is intended only for the more easy distin-
guishing of such lands, and not in any way to control or
diminish the description or delineation by a
colour on the plan attached hereto, which is a copy of a
plan annexed to a certain certificate, dated the
day of , now last past, under the hands
of two of the justices of the peace for the county of
 , assembled and acting together at
 , in the said county, on that day,
whereby, after reciting (among other things) that
days' notice had been given to you that an application
would be made to two justices of the peace for the county
of , for the correction of the
deposited plan of the book of reference
thereto referred to in the said secondly mentioned Act, it

was thereby certified (among other things) that certain Form 2c.
lands, situate within the fences bounding the
delineated on the said plan, coloured , and
No. , in the parish of , in the
county of , on the said plan and book
of reference, was erroneously described as
belonging to the ,
whereas in truth and in fact the said land belonged to you,
or any of you, as owners or reputed owners thereof, and
they the undersigned justices further certified that such
omission, misstatement, or erroneous description arose
from mistake. And I further give you notice that a copy
of such last-mentioned certificate has been lodged with
the clerk of the peace of the said county of ,
and also with the clerk of the said parish of .
And I further give you notice that the said company are
willing to treat with you and every of you for the pur-
chase of the lands and hereditaments so required as
aforesaid, with the appurtenances, and as to the compen-
sation to be made to you and every of you for the damage
that may be sustained by you and every of you by reason
of the execution of the works authorised by the said
secondly mentioned Act. And the said company do
hereby demand from you and each and every of you the
particulars of your respective estates and interests in the
lands and hereditaments so required as aforesaid, together
with all charges and interests to which the same is subject
and of the claims made by you and each of you in
respect thereof. And the said company do hereby further
give you notice, that if for days after the
service hereof you shall fail to state the particulars of
your respective claims in respect of the lands and here-
ditaments so required as aforesaid, or to treat with the
said company in respect thereof, or if you or any of
you respectively and the said company shall not agree
as to the amount of compensation to be paid by the said
company for or in respect of your respective interests in

Form 26. the premises so required or the interests therein, which you respectively are, by the said secondly mentioned Act, or the Acts incorporated therewith, enabled to sell, or for any damage that may be sustained by you respectively by reason of the execution of the works authorised by the said secondly mentioned Act, the said company will forthwith proceed to require the amount of such compensation to be settled in manner directed by the Lands Clauses Consolidation Act, 1845, for settling cases of disputed compensation.

Dated this day of , 18 .
To
Secretary of the said company.

THE SCHEDULE ABOVE REFERRED TO.

Parish or Place and County in which the Lands and Hereditaments required are situate.	No. on Map or Plan and in Book of Reference deposited with the Clerk of the Peace for the County of .	Description of Property.

Withdrawal of Notice to Treat as to Part of Lands after Counter Notice under Section 92.

Form 27. Whereas I, , on behalf of the Company, did by an instrument in writing, dated the day of , 18 , and served upon you , on the day of the same month, give you notice that the said company required to purchase and take, under the powers of the (*special Act*), and of the other Acts therein referred to, so much of the land or grounds and hereditaments as were distinguished by a colour on the plan attached thereto, and were described or

referred to in the schedule thereto annexed. And whereas Form 27.
you, the said _____, did by another instrument in
writing, dated the _____ day of _____, 18____,
give the said company notice with respect to the heredita-
ments and premises known as _____,
and of which you claim to be the owner, a portion of
which said hereditaments and premises was included in
the lastly hereinbefore recited notice, that you the said
_____ would not sell or part with the said portion
or any portion of the said hereditaments and premises,
unless the said _____ Company would purchase
and take from you the whole of the said hereditaments
and premises. Now I, _____, on such behalf as
aforesaid, do hereby give you notice that the said company
will not purchase or take the whole of the said heredita-
ments and premises required by you to be purchased and
taken in, and by your said recited notice of the
day of _____, 18____. And I further give you notice
that the said company do hereby withdraw and abandon so
much of the hereinbefore recited instrument in writing or
notice to you, of the _____ day of _____, 18____,
as relates to so much of the lands, grounds, and heredita-
ments distinguished by a _____ colour on the plan
attached to the said notice as are distinguished by a
colour on the plan hereunto annexed, and form part of the
adjoining houses, buildings, or manufactories belonging to
you the said _____, but the said company do not
withdraw or abandon the said instrument in writing or
notice otherwise, or in respect of any other of the lands,
grounds, or hereditaments distinguished by a
colour on the said plan hereunto attached.

Dated this _____ day of _____, 18____.

(Signed)

To _____ Secretary to the said Company.
and to all persons having or claiming
any estate or interest in the said lands
and hereditaments.

*Appointment of Arbitrator by Company.***Form 28.***(Short title of special Act.)*

In pursuance of the (*short title of special Act*) and the public Acts incorporated therewith, be it remembered that we, the (*name of company*), do by this writing under the hand of the secretary of the said company, appoint (*name and description of arbitrator*), to be our arbitrator to act for us, and on our behalf to settle and determine the purchase money and compensation to be paid by us for and in respect of the purchase by us of the estate and interest which (*name and description of landowner*) has or claims to be entitled to, or by the said Act is enabled to sell to us, in the lands and hereditaments situate in , in the township of , in the parish of , in the county of , comprised in a certain notice to treat given by us to the said (*landowner*), and dated the day of , 18 , and described and distinguished in the book of reference thereto deposited with the clerk of the peace of the county of , by the No. ; and also the compensation to be paid by us in respect of the damage, injury, or loss (if any), which the said (*landowner*) may sustain by reason of the taking of the said lands and hereditaments by the said company, and the execution of the works by the said (*short title of special Act*) or the Acts incorporated therewith authorised, and also as such arbitrator on our part and behalf to do all such other acts are required by the said Act or any Acts incorporated therewith.

Dated this day of , 18 .

(Signed)

Secretary of the Company.

*Notice by Company of Appointment of Arbitrator
with Request to Landowner to appoint one.*

To (*landowner*).

Form 29

We (*title of company or corporation*) by this writing, under the hand of _____, the secretary (or town clerk) of the said company (or borough), do hereby give you notice that we have by writing under the hand of the said _____, bearing date the day of _____, appointed (*name and description of arbitrator*) to be our arbitrator to act for us, and on our behalf to settle and determine the purchase money and compensation to be paid by us for and in respect of the purchase by us of the estate and interest which you the said (*landowner*) have or claim to be entitled to, or by the (*short title of special Act*) are enabled to sell to us in the lands and hereditaments situate in _____, in the township of _____, in the parish of _____, in the county of _____. And also the compensation to be paid by us in respect of the damage, injury, or loss (if any), which you the said (*landowner*) may sustain by reason of the taking of the said lands and hereditaments by the said company and the execution of the works by the said (*short title of special Act*) or the Acts incorporated therewith authorised, and also as such arbitrator to do all such other acts as are required by the said Act or any Acts incorporated therewith.

And we do hereby require you to appoint an arbitrator to act for you and on your behalf in the matter aforesaid.

Dated this _____ day of _____, 18 ____.

(Signed)

Secretary to the Company.

Notice by Company of Appointment of Arbitrator (under Protest) to settle Value of Lands, under Section 92.

Form 30. To

The Company hereby give you notice that they do not admit that the land and premises referred to in their notice, addressed to you of the day of now last past, are part of the land and premises mentioned and described in your notice to them of the day of instant, or that you are entitled under the Lands Clauses Consolidation Act, 1845, to require the said company to purchase and take whole of such lands, and, subject to and under protest, they are willing to nominate some person to act as arbitrator on their behalf in the matters aforesaid, as is required of them by you, in order that the amount of compensation which they the said company ought to make in respect of such of the said matters (if any) as may be proved, and as under the said Acts of Parliament, the said company may be liable to make compensation for may be settled, ascertained, and determined. And they further give you notice that they have, by an instrument in writing, under their common seal, bearing even date herewith, appointed (but subject to and under protest aforesaid) , of , in the county of , as the arbitrator to whom the matters mentioned in the notice under your hand, dated the day of , 18 , are referred, and have to request that the arbitrator appointed on your behalf will as soon as possible put himself in communication with the said , in order that, before the said two arbitrators enter upon the matter referred to them, an umpire may be nominated either by them or by the Board of Trade, in accordance with the provisions of the Lands Clauses Consolidation Act, 1845, in that behalf.

Dated this day of , 18 .

(Signed)

Two of the Directors of the

Company.

Whereas I, the undersigned (*name and description of landowner*), did on or about the _____ day of _____ last, receive a notice in writing from the (*title of company or corporation*), under the hand of _____, their secretary (or town clerk), requiring certain lands, buildings, and hereditaments therein mentioned for the purposes of the (*short title of special Act*). And whereas (*recite notice of claim*) I did on the _____ day of _____, receive from the said company a notice in writing, bearing date the _____ day of _____, under the hand of _____, their secretary, informing me that the said company have by writing under the hand of the said (*secretary*), bearing date the _____ day of _____, appointed (*name and description of arbitrator*) to be the arbitrator to act for the said company, and on their behalf to settle and determine the purchase money and compensation to be paid by the said company for and in respect of the purchase by them of the estate and interest which I, the said (*landowner*), have, or claim to be entitled to, or by the said (*short title of special Act*), am entitled to sell to the said company in the lands and hereditaments situate in _____, in the township of _____, in the parish of _____, in the county of _____. And also the compensation to be paid by the said company in respect of the damage, injury, or loss, if any, which the said (*landowner*) may sustain by reason of the taking of the said lands and hereditaments by the said company and the execution of the works by the said (*short title of special Act*) or the Acts incorporated therewith authorised, and the said company did by their notice now in recital require me to appoint an arbitrator to act for me and on my behalf in the matters aforesaid. Now, therefore, in compliance with the said requisition of the said company, and in pursuance of the provisions of the Lands Clauses Con-

Form 31. solidation Act, 1845, I do hereby nominate and appoint
(name and description of arbitrator) to be the arbitrator
on my behalf of and concerning the premises.

As witness my hand, this day of , 18 .
(Signed)

Notice of Appointment of Arbitrator by Landowner.

Form 32. To the (title of a company or corporation) and to the secretary (or town clerk) of the said company (or borough).

I, the undersigned (*name and description of landowner*), do hereby give you notice that pursuant to your notice and request, bearing date the _____ day of _____, 18____, under the hand of the said (*secretary*), giving me notice that you the said company had by writing under the hand of the said (*secretary*), bearing date the said day of _____ instant, appointed (*name and description of arbitrator*) to be your arbitrator to act for you and on your behalf to settle and determine the purchase money and compensation to be paid by you, the said company, for and in respect of the purchase by you of the estate and interest which I the said (*landowner*) have or claim to be entitled to, or by the (*short title of special Act*) am enabled to sell to you in the lands and hereditaments situate in _____, in the township of _____, in the parish of _____, in the county of _____; and also the compensation to be paid by you the said company in respect of the damage, injury, or loss (if any) which I may sustain by reason of the taking of the said lands and hereditaments by you the said company, and the execution of the works by the said (*short title of special Act*), or the Acts incorporated therewith authorised, and requiring me to appoint an arbitrator to act for me and on my behalf in the matter aforesaid, I have by writing under my hand, bearing date the _____ day of _____, 18____, nomi-

nated and appointed (*name and description of arbitrator*) to be the arbitrator on my part and behalf, to whom the said question of disputed compensation shall be referred, a copy of which appointment is hereunto annexed, and the said appointment and nomination will be immediately delivered to the said (*name of arbitrator*), as such arbitrator as aforesaid.

Witness my hand, this day of , 18 .
 (Signed)

Notice by Company of Appointment of Arbitrator.

The _____ Company **Form 33.**
and _____
(landowner).

London. 18 .

Take notice, that I have, on behalf of the above-named company, this day appointed, in writing under my hand, _____ surveyor, to be the arbitrator on behalf of the said _____ Company, for the purpose of settling and determining the purchase money and compensation to be paid by the said company for and in respect of certain hereditaments and premises belonging to you, situate _____ and being in the parish of _____, in the county of _____, and numbered _____ on the plan and in the book of reference of the said company, deposited with the clerk of the peace for the county of _____.

I am, sir,

Yours obediently,

(Signature)

Secretary to

The Railway Company.

Notice to Arbitrators to proceed.

Form 34. In the matter of the arbitration between
 (landowner), claimant,
 and
 (name of company), promoters.

To (names and descriptions of arbitrators).

Take notice, that the said company by this writing, under the hand of _____, the secretary of the said company, do hereby give you and each of you notice to proceed, and they hereby require you to proceed, to arbitrate in the matters to you referred by the parties to the said arbitration; and if either of you refuse, or for seven days from the service of this notice neglect to proceed, the other of the said arbitrators may proceed *ex parte*, and his decision will be as effectual as if he had been a single arbitrator appointed by both parties.

Dated this _____ day of _____

(Signed)

Secretary.

Notice of Arbitrator of his Readiness to proceed.

Form 35. In the matter of the arbitration between
 (landowner), claimant,
 and
 (name of company), promoters.

I (name and description of arbitrator), the arbitrator nominated by the above-named (landowner) in this matter, do hereby give you, the (name of company), notice that I am ready and willing to proceed with the business of the said arbitration, together with _____, your arbitrator.

That I have within the last month or five weeks called several times at the office, in _____, of _____, your arbitrator nominated by you the said company,

in the above matter, with the hope of inducing the said Form 35.
 to enter with me upon the
 business of the said arbitration; but I have not been able
 to meet with the said , although, on the occa-
 sions of my several calls at his office, I have requested the
 clerk or person there to inform him of my having called;
 and I hereby give you notice, and remind you the said
 company, that on the of instant,
 the time of myself and the said
 for making an award in this matter will expire, and I
 further give you notice that neither I nor the said (*land-*
owner), the above-named claimant, do consent that
 , the umpire appointed by the said
 and myself in this matter, should sit with us the said
 arbitrators; nor do we consent that the evidence which
 may be taken before us, the said arbitrators, shall be used
 or considered as taken before the said umpire; and I further
 give you notice that in order that the matters of the said
 arbitration may be forthwith heard and determined by the
 said , the umpire, I am ready and
 willing to sign, along with the said , a
 memorandum to the effect that I and the said
 have differed on the matters which have been referred to
 us in this arbitration.

Dated this day of 18 .
 (Signed)

Agreement to extend the Time of the Arbitrators.

In the matter of (*short title of special Act*) and of the Form 36.
 arbitration between

(*landowner*)
 and
 (*company*).

Memorandum.—We do hereby agree that the time of
 the arbitrators in this matter shall be extended to the
 day of .

Form 36.

Dated this day of , 18 .

(Signed)

{ Solicitor for the above-named
(claimant).

(Signed)

{ Solicitor for the above-named
(company).*Request to Arbitrators to appoint an Umpire.*Form 37.

(Short title of special Act.)

In the matter of (*short title of special Act*), and of a question of disputed compensation arisen under the said Act between me the undersigned (*landowner*) and the (*name of company*).

To (*names and descriptions of arbitrators*).

I, the undersigned (*name and description of landowner*), request you the said , as the arbitrator appointed by me and on my behalf, and you the said , as the arbitrator appointed by and on behalf of the said company to whom the said question of disputed compensation is referred, to nominate and appoint, by writing under your hands, within ten days after the service hereof upon you and before you enter upon the matters referred to you, an umpire to decide on any such matters so referred to you in which you shall differ, or which shall be referred to him, under the provisions of the Lands Clauses Consolidation Act, 1845, or the said (*short title of special Act*); and if for ten days after this request you neglect or refuse to appoint an umpire, I further give you notice that I shall apply to two justices of the peace to appoint such umpire, pursuant to the provisions of the said Lands Clauses Consolidation Act, 1845.

Dated this day of , 18 .

(Signed)

Appointment by Arbitrators of Umpire.

The

Company

Form 38.

and

(landowner).

In pursuance of the provisions of (*special Act*), and of the several provisions of the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Amendment Act, 1869, respectively incorporated therewith, we, the undersigned arbitrators, do, before entering upon the matters referred to us, hereby appoint _____, of _____, in the county of _____, to be the umpire to decide on any such matters on which we may differ, or which shall be referred to him under the provisions of the aforesaid Acts, or any of them.

Dated this _____ day of _____.

(Signed)

arbitrator for the
Company.

arbitrator for
(landowner).

Appointment of Umpire.

Know all men by these presents, that we _____,

Form 39.

, of _____,

and _____,

, of _____,

having been duly, by appointments in writing, nominated the arbitrators respectively for and on the behalf of the _____ Company and *(landowner)* to settle and determine the amount of purchase money and compensation to be paid by the company to the said *(landowner)* for and in respect of the purchase of the estate and interest of the said *(landowner)* in certain hereditaments and premises, situate in _____, in the county of _____, do by this writing under our hands, and before entering

Form 39. upon the matters referred to us, nominate and appoint
 , of , to be the umpire
 to decide on any matters on which we may differ, or which
 may be referred to him under the provisions of the said
 company's Act, or any Act incorporated therewith.
 As witness our hands, this day of , 18 .

Agreement that Umpire may sit with Arbitrators.

Form 40. In the matter of the (*short title of special Act*), and of
 the arbitration between
 (*landowner*)
 and
 (*company*).

Memorandum.—We hereby undertake and agree that
 it shall be lawful for the umpire in this matter to sit and
 hear evidence in conjunction with the arbitrators, and that
 the award (if any) of such umpire may be based upon
 such evidence, although at the time it was taken the arbi-
 trators may not have differed in opinion on the matters
 referred to them.

Dated this day of , 18 .

(Signed) { Solicitor for the above-named
 (landowner).
 (Signed) { Solicitor for the above-named
 (company).

*Appointment by Arbitrators of Time and Place for
 Proceeding with Reference.*

Form 41. In the matter of (*short title of special Act*),
 and of the Lands Clauses Consolidation
 Act, 1845, and of the arbitration between
 (*landowner*) and (*name of company*).

We appoint day, the day of ,
 instant, for proceeding in this reference, at (*name of place*),

at the hour of o'clock in the forenoon, at which Form 41.
time and place the parties to the said arbitration, and
their counsel, attorneys, and witnesses are required to
attend.

[illegible]

To the above-named parties.

Agreement as to Number of Witnesses.

In the matter of the (*short title of special Act*), and of Form 42.
the arbitration between

(landowner)

and

(company).

We do hereby respectively undertake and agree that the number of _____ of professional valuers (*or as the case may be*), to be called as witnesses on behalf of each party in this case shall not exceed _____, and that this agreement shall not prejudice the legal rights of the parties on the question of costs.

Dated this day of

(Signed) { Solicitor for the above-named
(landowner).

(Signed) { Solicitor for the above-named
(company).

Notice to produce Plans and Sections of intended Works.

(Short title of special Act.)

Form 43

In the matter of an arbitration

Between (landowner), claimant,
and

(company), promoters.

As the solicitor for and on behalf of the said

Form 43. the claimant in the matter, I hereby give you notice, and require you to produce, and show to the arbitrators and umpire in this matter, sitting at , on day, the day of , the plans and sections showing the direction and levels of the intended (*contemplated works*) proposed to be constructed by you, the (*title of company*), and described in section of the said (*short title of special Act*), as

Dated this day of

(*Signed*)

To the (*title of company*).

Notice to Landowner to Produce.

Form 44.

(*Short title of special Act.*)

In the matter of the arbitration

Between (*landowner*)
and
(*company*).

Take notice, that you are hereby required to produce and show, or cause to be produced and shown, to the umpire and arbitrators, sitting at , on the day of , for the purpose of settling and determining the amount of compensation to be paid by the said company to you, the said claimant, for your interest in the messuages, land, and hereditaments, situate in , in the borough of , in the county of , all deeds, wills, documents of title, papers, letters, copies of letters, and all writings or other documents containing any entry, memorandum, or minute relating to the names of the several tenants of the property in question, and the amount of rent paid by them respectively during the last five years, and the books, receipts, and papers showing the amount of outgoings in respects of the said property for repairs, parochial and municipal rates and taxes, and for supply of gas and water

to the said premises, and the rent account rendered to or Form 44.
for you, showing the sum or sums of money actually paid
by the agent or collector over to the owner during the last
five years, and also the private ledger or other book con-
taining the entry of such account, or any abstract or extract
thereof, and also all other books, papers, letters, copies of
letters, and all other writings and documents whatsoever
in your custody, possession, or power, in anywise relating
to the matter in question herein.

Dated this day of , 18 .

(Signed)

Secretary of the company.

*Agreement that no Objection shall be taken by Reason of
Award being made after the proper Time.*

In the matter of an arbitration

Form 45.

Between

and

The

Company.

I, , of ,

in the county of , do by this writing

under my hand, and we, the

Company, do by this writing, under our common seal, con-
sent and agree that no objection shall be taken to the

award of , of ,

surveyor, the umpire nominated and appointed by

and

the arbitrators respectively, duly appointed by us in this
matter by reason of the said award not being made within

months after the time by law in that behalf

limited; if so, that such award be made at any time up to
and inclusive of the day of , 18 .

Dated this day of , one thousand eight
hundred and .

Passed under the common seal of the above-named
(company), in the presence of .

Notice of Intention to Summon Special Jury.

Form 46.

*(Title of undertaking.)*Recital of
notice to
treat.

To

Whereas a notice in writing, addressed to you, dated the day of , and signed by the secretary of the Company, was duly served upon you more than twenty-one days prior to the date hereof, and the said company did thereby, in pursuance of the provisions of the (*special Act*), the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, give you notice that the said company required to purchase or take all the lands and hereditaments, with the appurtenances, mentioned and specified in the schedule thereto, and delineated on the plan attached thereto, and therein distinguished by a colour; and that they the said company were willing to treat with you for the purchase of the said last-mentioned lands and hereditaments, with the appurtenances, and as to the compensation to be made to you for the damage that might be sustained by you by reason of the works of the said undertaking. And the said company thereby demanded from you the particulars of your estate and interest in the last-mentioned lands and hereditaments so required, as last aforesaid, and of the claim made by you in respect thereof. And whereas you are or claim to be the owner of or interested in the said lands and hereditaments, with the appurtenances, or to be enabled or entitled to sell or convey or release the same. And whereas no agreement has been come to between the said company and you for the purchase by the said company of the said lands and hereditaments, with the appurtenances, or of the interest belonging to you therein, nor as to the compensation to be made to you for the severance of the said lands and hereditaments from other lands whereof you are the owner, or for the otherwise injuriously

Recital
that price
has not
been
agreed
upon.

affecting of such last-mentioned lands by the execution of Form 46.
the said works. Now, therefore, the said company do hereby, in pursuance of the powers and provisions of the said Acts, further give you notice that it is the intention of the said company, after the expiration of ten days from the date of the service hereof upon you, to issue their warrant for summoning a special jury, and to cause such jury to be summoned, for the purpose of ascertaining by their verdict the amount of purchase money and compensation to be paid by the said company for and in respect of the purchase of the estate and interest belonging to you, or which by the said Acts you were enabled or entitled to sell and convey or release in the lands and hereditaments, with the appurtenances, so required to be purchased and taken as aforesaid, and for the damages sustained by severance, or otherwise sustained or to be sustained by you by reason of the execution of the said works and the exercise of the powers of the said Acts. And the said company do hereby further give you notice that they are willing and hereby offer to give the sum of _____ as and for such purchase money and compensation as aforesaid.

Dated this _____ day of _____, 18 ____.

Signed on behalf of the company,

Secretary.

Notice of Intention to Summon a Jury, and Offer of Compensation.

(Insert short title of special Act.)

Form 46 a.

To *(landowner's name)*, the owner or reputed owner of the messuages, lands, and hereditaments herein-after referred to.

Whereas the said _____ Company did, by a notice Recital of notice to treat.
in writing, bearing date the _____ day of _____,
duly served on you, give you notice that, by virtue and under the authority of *(short title of special Act)*, and

Form 46 a. of the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, incorporated therewith, the said company required to purchase, take, and use the messuages, lands, and hereditaments therein numbered or described, and situate in or near to _____, in the township of _____, in the parish of _____, in the said county of _____,

Recital
that price
has not
been
settled.

. And the said company did thereby demand from you the particulars of your estate and interest in such messuages, lands, and hereditaments, and of the claim made by you in respect thereof or of any part thereof. And whereas you the said (*landowner*) and the said company have not agreed as to the amount of compensation to be paid by the said company to you for your interest in such messuages, lands, and hereditaments belonging to you, and for the damage, if any, which may be sustained by you by reason of the exercise by the said company of the powers of the said Acts or any of them. Now, this is to give you notice, that it is the intention of the said company, after the expiration of ten days from the service hereof, to cause a special jury to be summoned, in pursuance of the provisions of the said Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, incorporated therewith, for settling the amount of compensation to be paid by the said company to you for your interest in the said messuages, lands, and hereditaments, and for the damage, if any, that may be sustained by you by reason of the exercise by the said company of the powers of the said Acts, or any of them, and for the purpose to issue their warrant to the sheriff of the said county of _____, requiring him to summon a jury accordingly. And this is to give you further notice, that the said company are willing to give the sum of £ _____ for your interest in the said messuages, lands, and hereditaments belonging to you and sought to be purchased by the said company from you as aforesaid, and for the damage, if any, that may be

*Warrant to Summon Jury.*Form 48*(Special Act.)**(County)* to wit.

Whereas, in pursuance of the provisions contained in the *(special Act)* and the public Acts incorporated therewith, the Company, by an instrument in writing, under the hand of the secretary of the said company, bearing date the day of , 18 , and addressed to , and to all persons having or claiming any estate or interest in the lands and hereditaments contained in the schedule thereunto annexed, gave them notice that the said company required to purchase and take for the purposes of their undertaking certain lands and hereditaments, and premises, situate in the parish of , in the said county of , and numbered on the map or plan, and in the book of reference, deposited with the clerk of the peace for the said county, as respects lands in the said parish, and which lands and hereditaments so required as aforesaid were delineated on the plan attached to or delivered with the said notice, and thereon distinguished by a colour. And the said company thereby gave the said persons notice that the said company were willing to treat with them and every of them for the purchase of the said lands and hereditaments so required as aforesaid, with the appurtenances, and as to the compensation to be made to them and every of them for the damage that might be sustained by them or every of them by reason of the execution of the works authorised by the said Act. And the said company thereby demanded from them and each and every of them the particulars of their respective estates and interests in the lands and hereditaments so required as aforesaid, together with all charges and interests to which the same was subject, and of the claims made by them and each of them in respect thereof. And whereas the said notice was duly

served upon the said _____, in accordance Form 48.
with the provisions of the Lands Clauses Consolidation
Act, 1845, in that behalf. And whereas the said

_____ is or claims to be interested in the said
lands, hereditaments, and premises under a lease thereof,
for a term of _____ years, from _____, 18____, subject
to the payment of the rent and the performance of the
conditions and stipulations therein contained, and claims
the sum of £ _____ as and for compensation in respect thereof.

And whereas the said _____ and the said
company not having agreed as to the amount of purchase
money and compensation to be paid by the said company
to the said _____ for h_____ estate and interest in the
said lands and hereditaments required as aforesaid, and for
any damage sustained, or which may be sustained by h_____
by reason of the execution of the works authorised by the
said Act, did, by a notice in writing, dated the
day of _____, 18____, and duly served on the said

_____ more than _____ days before
the date hereof, give h_____ notice that it was the intention
of the company, after the expiration of _____ days from
the service of the said last-mentioned notice, to issue their
warrant to the sheriff of the county of _____, or
other proper officer, requiring him to summon a special
jury in pursuance of the provisions of the said Lands
Clauses Consolidation Act, 1845, in that behalf, to inquire
and assess the amount of such purchase money and com-
pensation as aforesaid, which the said _____ might

be entitled to receive under the provisions of the said Acts
for and in respect of the lands, tenements, and heredita-
ments, and premises in the said notice mentioned and
described, and of h_____ estate and interest therein. And the
said company did thereby further give the said
notice that they the said company were willing to give the
sum of £ _____ as and for such compensation. Now, there-
fore, the said company, in accordance with the said notice,
and in pursuance of the powers and provisions of the said

Form 48. Acts, do by this warrant under their common seal issued to you, the said sheriff of the said county of _____, require you to nominate, strike, and reduce a special jury in compliance with the directions of the said Acts, to determine, by their verdict, the sum or sums of money to be paid by the said company for the purchase by them of the estate and interest of the said _____ in the lands, hereditaments, and premises so required as aforesaid. And also the sum or sums of money to be paid by the said company by way of compensation for the damage, if any, that may have been or may be sustained by the said _____, by reason of the execution of the works by the said first-mentioned Act authorised, and the exercise by the company of the powers of the said Acts.

Given under the common seal of the

Company, this

day of _____, 18 . [Seal.]

Warrant to Sheriff under Protest. Notice of Claim for injuriously affecting.

Form 49. (County) to wit:

To the Sheriffs of the county of _____.

Whereas we, the _____ Company, have been served with a certain notice in writing in the words and figures following (that is to say) :—

“ To the _____ Company,

“ Whereas, by the exercise of the (*special Act*) and other Acts incorporated therewith, you have injuriously affected a certain house and shop, situate and being No. _____, in _____, in the parish of _____, in the county of _____ (formerly known as _____).

“ Now I, the undersigned _____, being possessed of the said house and premises for the residue of the term of _____ years from _____, 18 , granted by an indenture of lease, dated the _____ day of _____,

18 , and made between and me the under-
signed , do hereby, in pursuance of the statute
in that case made and provided, give you the said com-
pany notice that I require you to pay me compensation in
respect of the said house and shop, and my estate and
interest therein, and that the amount of my claim for
compensation is £ . And I further give you notice that
unless you are willing to pay the amount of such compen-
sation, and enter into a written agreement for that purpose
within days after the receipt by you of this notice,
then I desire that the amount may be settled by a jury
according the provisions contained in the statutes in such
case made and provided. And if you fail to pay the said
sum of £ , or to enter into such written agreement as
aforesaid in that case, I do hereby require you within
days after the receipt by you of this notice to issue your
warrant to the sheriff of to summon a jury for
settling the amount of the said compensation.

"Witness my hand, this day of , 18 .
(Signed) _____

And whereas, the said notice was served upon us on
the day of now last past.

And whereas we do not admit that the said house and premises have been injuriously affected by the exercise of the powers contained in the said (*special Act*), or of the other Acts incorporated therewith or any of them, or that the said has sustained any damage for which we are liable to make any compensation under the said Act of Parliament or any of them, on which compensation can be claimed, and we altogether dissent from the said claim, but, subject to and under protest, we are willing to issue our warrant to summon a special jury in order that the amount of compensation which we ought to make in respect of such of the said matters (if any) as may be proved, and as under the said Acts of Parliament we may be liable to make compensation for may be settled, ascer-

Form 49. tained, and determined. Now, therefore, we the Company, in compliance with the request in that behalf contained in the said before mentioned notice, and in pursuance of the provisions of the said Acts of Parliament, and especially the Lands Clauses Consolidation Act, 1845, do by this warrant under our common seal issued to you the said sheriff of the county of , require you to summon a special jury, in compliance with the directions of the said Acts, for the purpose of settling, ascertaining, and determining (but subject to and under protest as aforesaid) the sum or sums of money to be paid by way of compensation for the damage (if any) sustained by the said by the said house and premises having been injuriously affected by reason of the exercise of the powers contained in the (*special Act*), and any other Acts incorporated therewith vested in us.

Given under our common seal, this day of , 18 .

The common seal of the Company was affixed hereto in the presence of [Seal.]

Waiver of Objection to interested Sheriff.

Form 50. In the matter of the (*special Act*), and in the matter of a compensation claim between and the Company, we hereby consent to this case being taken and heard before the sheriff of , at his office, , on , the day of next, and that no objection shall be taken on account of the said sheriff being interested in the matter in dispute.

Dated the day of , 18 .

Notice from Sheriff of Appointment of Time and Place for Nomination of Jury.

Form 51. (landowner), and the Company.

(County.) By virtue of a certain warrant under the

common seal of the above-named Company to me Form 51.
 directed, I hereby appoint day, the day
 of instant, at of the clock in the forenoon,
 at my office, situate , in the said county, to be the
 time and place for the purpose of nominating a special
 jury in the above matter. And I hereby summon both
 parties to appear before me by themselves or their agents
 at the time and place above mentioned for the purpose
 aforesaid.

Dated this day of , 18 .

(Signature)

Sheriff.

To the promoters of the works,
 the above-named company,
 their solicitors or agents.

Notice of Time and Place of holding Inquiry.

The Railway Company. Form 52.
 To

The Railway Company do hereby, in pur-
 suance of the notice already served upon you on behalf of
 the said company, dated the day of ,
 18 , give you notice that a jury of persons duly sum-
 moned and returned by the sheriff of the county of
 , according to the provisions of the Lands
 Clauses Consolidation Act, 1845, at , in the
 , at the Sheriff's Court, situate, &c., for the
 purpose of ascertaining, inquiring of, and assessing and
 delivering a verdict for the purchase money and compensa-
 tion to be paid for and in respect of the lands and
 hereditaments, with the appurtenances, referred to in the
 said notice.

Dated this day of , 18 .

Signed on behalf of the said Company,

(Signature)

Secretary.

Sheriff's Notice of Day appointed for hearing Compensation Inquiry.

Form 53.

(landowner), and the

Company.

(County.) By virtue of a certain warrant under the common seal of the above-named company to me directed, I hereby appoint day; the day of , at o'clock in the forenoon, at the house known by the name of the Sheriff's Office, situate, &c., to be the time and place for the purpose of holding an inquisition pursuant to the said warrant.

Dated this day of , 18 .

(Signature of Sheriff.)

To the promoters of the works of
the said company, their agents,
and whom else it may concern.

Request to Paymaster-General to prepare Directions for Payment into Court.

Form 54.

The Paymaster-General is requested to prepare directions to enable the Company, pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, and the (*special Act*), to pay the sum of pounds into the Bank of England, to the credit of *Ex parte* Company, in the matter of the (*special Act*), in respect of land claimed by (landowner).

Dated this day of , 18 .

(Signature and address of solicitor)

Solicitor to the Railway Company.

*Request for Directions for Payment into Court, under
Section 69.*

To

Form 55.

The Paymaster-General of the Chancery Division of
the High Court of Justice.

Your direction is requested to enable the
Railway Company, pursuant to the 69th section of the
Land Clauses Consolidation Act, 1845, and the ,
to pay into the Bank of England, to the credit of *Ex parte*
the Railway Company, in the matter
of the Railway Act, 18 , in respect of
lands claimed by
and which premises unable to sell and convey
save under and by virtue of the provisions of the said Act,
the sum of £ .

Dated this day of , 18 .

(Signature and address of solicitor)

Solicitor to the

Railway Company.

Directions for Payment into Court, under Section 69.

Chancery

Form 56.

To the Governors and Company of the Bank of
England.

Chancery Pay Office,
day of , 18 .

Please to receive of the Company
the sum of
and place it to "The account of the Paymaster-General for
the timebeing on behalf of the Court of Chancery," which
money is to be placed in the books at his office, to the
credit of *Ex parte* the Company, in the

Form 56. matter of the (*special Act*), in respect of lands claimed by _____, in _____, in the county of _____, being money payable into Court to the same credit, pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, and the (*special Act*).
£

(*Paymaster-General's signature*)

day of _____, 18 .

The above-mentioned sum of £ _____ was this day paid into the Bank of England, and has been placed to the account of the Paymaster-General for the timebeing, on behalf of the Court of Chancery.

For the Governor and Company of
the Bank of England.

*Notice of Intention to apply to Board of Trade to
appoint a Surveyor, under the Railway Companies
Act, 1867.*

Form 57. To _____
Whereas, by a certain notice in writing, under the hand of the Secretary of the _____ Company, dated the _____ day of _____, one thousand eight hundred and _____, and served upon you on the _____ day of _____, one thousand eight hundred and _____, the said company gave notice that they required to purchase and take under the powers of the _____, with which Act are incorporated the Lands Clauses Consolidation Act, 1845, and the Railway Companies Act, 1867, the lands and hereditaments therein referred. And whereas you claim to be interested in the said lands. And whereas no agreement has been come to or award made, or verdict given for the purchase money or compensation to be given by the said company in respect of your interest in the said lands and hereditaments. And whereas the said company

is desirous, and proposes under and subject to the 85th Form 57.
and other sections of the Lands Clauses Consolidation Act,
1845, to enter upon and use the same lands and heredita-
ments for the purposes of the undertaking. Now I the
undersigned do hereby give you notice that it is the inten-
tion of the said company under the provisions of the said
Railway Companies Act, 1867, not less than seven days
after the service hereof upon you to apply to the Board of
Trade for the appointment of a surveyor to determine the
value of the interest in the said lands you claim to be
entitled to or enabled to sell and convey, including the
amount of compensation for all damage and injury to be
sustained by reason of the exercise of the powers conferred
by the 85th section of the Lands Clauses Consolidation
Act, 1845, as far as such damage and injury are capable of
estimation.

Dated this day of , one thousand eight
hundred and .

(Signed)

Secretary of the said Company.

*Application to Board of Trade to appoint a Surveyor,
under the Railway Companies Act, 1867.*

To Her Majesty's Commissioners for Trade and Foreign Form 58.
Plantations, commonly called the Board of Trade.

Whereas the
Company are desirous, under the provisions of
with which are incorporated
the Lands Clauses Consolidation Act, 1845, and the
Railway Companies Act, 1867, of entering upon and using
certain lands which are comprised in the copy notice to
treat, hereunto annexed, and are situate in the parish of
, in the county of
and are more particularly described in the schedule and

Land in
the parish
of in
the county
of

Form 58. plan attached to the said notice, which was served upon
on the day of ,
one thousand eight hundred and .

And whereas the said
claims to be interested in the said lands, and the said
company propose, under and subject to the powers and
provisions of the said Acts, to enter upon and use the
same for the purposes of the said first mentioned Act
before any agreement, award, or verdict, shall be come to,
made, or given, and to deposit in the Bank, by way of
security, according to the provisions of the said Lands
Clauses Consolidation Act, 1845, such a sum as shall be
determined by a surveyor appointed by you under the
provisions of the Railway Companies Act, 1867, to be the
value of the interest in the said lands, which the said
is entitled to or enabled to sell or
convey. And whereas the said does
not consent to such entry and user by the said company
as aforesaid, and notice of the intention to apply to you
for the appointment of a surveyor has been given to him
not less than seven days prior to the date hereof, now,
therefore, the said company hereby apply to you to
nominate and appoint, under the provisions of the said
Act, a surveyor to determine the value of the said lands
and hereditaments.

Dated this day of , one thousand
eight hundred and .

(Signed)

Secretary to the Company.

Request to Board of Trade to appoint a Surveyor.

18 .

Form 59.

(Title of undertaking.)

Sir,—

We are instructed by the
Company to take the necessary proceedings under the

Lands Clauses Consolidation Act, 1845, and the Railway Companies Act, 1867, to obtain possession of certain land and hereditaments, in the parish of _____, in the county of _____, belonging _____ and required by the company under the powers of Form 59.

No agreement has been come to, award made, or verdict given for the purchase money or compensation to be paid to the said _____ in respect of his interest in the said land and hereditaments; but the company are desirous of entering upon and using them at once for the purposes of their works.

We therefore beg respectfully to request that the Board of Trade will appoint a surveyor, pursuant to the Railway Companies Act, 1867, to value the estate and interest of the said _____ in the land and hereditaments in question.

We send herewith a copy of the notice to treat served by the company upon the said _____, together with a copy of the plan annexed to such notice, and a copy of the seven days' notice of this application.

We are, Sir,
Your obedient servants,
(Signatures)

To
The Assistant Secretary,
Railway Department,
Board of Trade,
Whitehall, S.W.

Notice of Entry to probe, bore, stake out, &c.

The _____ Company. Form 60.
To
The _____ Company
having under and by virtue of (*special Act*), and of the
G G 2

Form 60. Lands Clauses Consolidation Act, 1845, authority granted to them to enter upon your lands at _____, in the parish of _____, in the county of _____, for the purpose of surveying or of taking levels of such land, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, after giving not less than three or more than fourteen days' notice to the owners or occupiers thereof, making compensation for any damage thereby occasioned, do hereby give you notice that it is their intention, after the expiration of three days from the service of this notice, by their agents and workmen, for the purposes hereinbefore referred to, or some of them, to enter upon such lands for the purposes aforesaid, or some or one of them, making you compensation for any damage thereby occasioned.

Dated this _____ day of _____ 18 .

(Signed)

Secretary to the (company).

Note.

In leaving with you the above notice the company beg to add that they have desired their agents and workmen to set out the line with the least possible inconvenience, and that complaint of violating these instructions will meet with immediate attention at the offices of the company.

This notice is for the preliminary purpose of setting out the line only, and does not extend to any proceeding for the purpose of acquiring such of your land as may be required to be purchased or used by the company for the construction of their intended railway and works.

Bond under Section 85.

Form 61. Know all men by these presents, that we, the _____ Company, and _____ are held and firmly bound to _____ in the sum of _____

£ , to be paid to the said , or a certain Form 61.
 attorney, executors, administrators, or assigns, for which
 payment to be well and truly made, we the company bind
 ourselves and our successors, and we the said

bind ourselves and each of us and our
 respective heirs, executors, and administrators and every
 of them, jointly and severally, firmly by these presents,
 given under the common seal of the company, and sealed
 with the seals of the said and
 , dated this day of , 18 .

Whereas the Company require to
 purchase and take for the purposes of the works, authorised
 by the (*special Act*) and the Acts incorporated therewith,
 certain lands and hereditaments, situate in the parish of
 , in the county of , the
 particulars of which are set forth in the schedule hereunder
 written, and which for the better ascertaining them are
 delineated by the colour in the plans annexed to
 the notice, dated the day of , 18 , hereinafter
 mentioned. And whereas the above-named
 is or claims to be entitled under the provisions of the said
 Acts, to sell and convey the said land and hereditaments
 to the company. And whereas the company have, by a
 notice, dated the day of , 18 , and con-
 taining all such particulars as are required by the Lands
 Clauses Consolidation Act, 1845, in that behalf, given
 notice to the said of their intention to
 take the said land and hereditaments. And whereas no
 agreement has been come to, or award made, or verdict
 given for the purchase money or compensation to be paid
 by the company to the said , for his estate
 or interest in the said lands and hereditaments, and the
 company are desirous and propose, under and subject to the
 powers and provisions of the Lands Clauses Consolidation
 Act, 1845, to enter upon and use the same for the purposes
 and under the provisions of the said Act, before any such
 agreement, award, or verdict shall be come to be made or

Form 61.

given, but the said does not consent to such entry. And whereas the company have, by a notice, dated the day of , 18 , duly served on the said , given the said notice that they intended, after the expiration of seven days from the date of the said being served with the now reciting notice, to apply to the Board of Trade for the appointment of a surveyor to determine the value of the said land and hereditaments, according to the 85th section of the Lands Clauses Consolidation Act, 1845. And whereas after the expiration of seven days from the service of the said notice the company applied to the Board of Trade to appoint a surveyor in accordance with the provisions of the Railway Companies Act, 1867. And whereas , of , in the county of , an able practical surveyor, duly nominated and appointed by the Board of Trade, in accordance with the provisions of the last-mentioned Act, has determined the value of the estate and interest which the said claims to be enabled to sell to the company of and in the said land and hereditaments at the sum of £ . And whereas the company have, in pursuance of the provisions in this behalf contained in the Lands Clauses Consolidation Act, 1845, paid into the Bank of England the sum of £ , to the account of the Paymaster-General for the time being, on behalf of the Court of Chancery, to the credit of *Ex parte* the Company, the account of , as such deposit by way of security to him as required by the said last-mentioned Act. And whereas the said and are two sufficient sureties within the meaning of the said Lands Clauses Consolidation Act, 1845. Now the condition of the above-written bond or obligation is such that if the company shall pay unto the said , or deposit in the Bank of England for the benefit of the parties interested in the said land and hereditaments, as the case may require under

the provisions contained in the said Lands Clauses Consolidation Act, 1845, all such purchase money or compensation as may in manner in the same Act provided, be determined to be payable by the company, in respect of the same land and hereditaments, together with interest thereon, at the rate of £5 per cent. per annum, from the time of entering on such land and hereditaments until such purchase money or compensation shall be paid to the said , or deposited in the Bank for the benefit of the parties interested in the said land and hereditaments under the provisions in the said Acts contained. Then the above written bond or obligation to be void, otherwise to remain in full force.

The Schedule above referred to

All those pieces or parcels of land containing together by admeasurement or thereabouts, situate in the parish of , in the county of , and being the pieces or parcels of the larger pieces of land and hereditaments, defined and described on the plans, and in the book of reference of the railway, authorised by the (*special Act*), deposited at the office of the clerk of the peace for the said county, and numbered .

The common seal of the said company }
affixed hereto in the presence of }

Signed, sealed, and delivered by the }
above bounden }
in the presence of }

Signed, sealed, and delivered by the }
above bounden }
in the presence of }

*Request to Paymaster-General for Directions for
Payment into Court, under Section 85.*

Form 62. To

The Paymaster-General of the Chancery Division of the High Court of Justice.

Your direction is requested to enable the
Company, pursuant to the 85th section of the Lands Clauses Consolidation Act, 1845, and the (*special Act*), to pay into the Bank of England, to the credit of *Ex parte* the Company, the account of in respect of lands claimed by him in , in the county of , pounds, being the amount determined by a surveyor duly appointed by the Board of Trade to be the value of the said lands.

(*Solicitors' signature and address*)

Solicitors for the Company.

Authority to present Petition.

Form 63.

The Company
and
(*landowner*).

We hereby authorise you to present a petition in the joint names of (*landowner*) and the company for the payment out of court to the company of the sum of pounds, &c., paid into the Bank of England by them in the month of , 18 , under the provisions of the Lands Clauses Consolidation Act, 1845, before taking compulsory possession of certain land, in the parish of , in the county of , the purchase of which has since been completed, and the purchase money and interest paid by the company.

(*Signatures*)

Solicitors for the said .

To Messrs.

Solicitors for the said company.

*Petition for Payment out of Money paid in under
Section 85.*

Sheweth

(usual title, &c.)

Form 64.

That your petitioner (*landowner*), was interested in certain lands and hereditaments, situate in the parish of _____, in the county of _____, which your petitioners, the

company, were by the

Act, 18 _____, empowered to purchase and take for the purposes of the works thereby authorised to be constructed.

That in the month of _____, 18 _____, your petitioners, the company, having occasion for the said lands and hereditaments before an agreement had been come to, an award made, or verdict given for the purchase money, or compensation to be paid by them in respect of the interest of your petitioner, the said (*landowner*), therein, your petitioners, the company, pursuant to the 85th section of the Lands Clauses Consolidation Act, 1845, deposited in the Bank of England, by way of security, to the account of the Paymaster-General for the time being, on behalf of the Court of Chancery, to the credit of *Ex parte* the _____ Company,

the account of _____,

the sum of £ _____, being the amount which had been determined by an able practical surveyor, duly appointed, pursuant to the Railway Companies Act, 1867, to be the value of the interest of your petitioner, the said (*landowner*), in such lands and hereditaments, and your petitioners, the company, gave your petitioner, the said (*landowner*), a bond under the common seal, with two sufficient sureties, in pursuance of the provisions contained in the said Acts.

That the said sum of £ _____ has been placed

Form 64. on deposit in pursuance of the Chancery Funds Act, 1872,
and is now represented by £ , money on deposit
and £ cash.

Notice of Claim for Apportionment of Rent.

Form 65. (*Begin as in Form 76.*)

And I further give notice to the said company that I
require an apportionment of the said yearly rents of
£ and £ , respectively, pursuant
to the terms and provisions of the said Lands Clauses
Consolidation Act, 1845.

Summons to Apportion Rent.

Form 66. Borough of }
 in the county of }
 to wit }

To the *(title of company)*, *(landowner)*, *(the owner of the rents)*.

Whereas information hath this day been laid before
me, the undersigned , the stipendiary magis-
trate for the said borough, for that by an indenture, dated
the day of , made between
of the one part, and of the other part, certain
hereditaments therein described as situate, &c., were
assured by the said to the said ,
subject to the payment thereof of a perpetual yearly
rent of £

And whereas the said hereditaments are now vested
in you, the said *(landowner)*, in fee simple, subject to the
payment of the said yearly rent.

That all benefit and advantage of the said yearly rent of £ is now vested in you the said (*owner of the rent*). Form 66.

That you, the said company, in pursuance of the powers vested in you by the (*short title of the special Act*), are for the purposes of the said Act about to purchase and take the interest of the said as the owner in fee simple, in square yards, being part of the site of the said hereditaments; and whereas, pursuant to the Lands Clauses Consolidation Act, 1845, which is incorporated with the said Act, the said yearly rent of £ ought to be, and the said (*landowner*) has by notice in writing under his hand, and dated the day of , and served upon the said company, required that the same shall be apportioned between the lands so required and about to be taken for the purposes of the said (*short title of special Act*), and the residue of such lands, and that such apportionment has not been so settled by agreement between the parties interested therein or affected thereby.

These are, therefore, to command you, in Her Majesty's name, to be and appear on the day of , 18 , at o'clock in the , at the Borough Court, at , in the said borough, before me the said stipendiary magistrate, or such two other of Her Majesty's Justices of the Peace as may then be there, in order that such apportionment may be settled in pursuance of the said statutes, and such other proceedings had and taken then as to the law do appertain.

Given under my hand and seal this day of , in the year of our Lord, 18 , at the said borough.

(Signed)

[Seal.]

of £ reserved and made payable by the said recited Form 67.
 indenture shall be apportioned. And we the said justices
 do hereby, in pursuance of the statutes in that behalf
 enabling us, settle and apportion the said rent in manner
 following, that is to say: That from and after this day
 of , the yearly sum or rent of £ (part
 of the said yearly rent of £) shall be apportioned
 and payable in respect of the portion of the said heredita-
 ment which is about to be taken and purchased by the
 said company as aforesaid; and that from and after the
 said last-mentioned day the yearly rent or sum of £ ,
 and no more, shall be apportioned and payable in respect
 of the residue of the said hereditaments which will not be
 so taken as aforesaid by the said company. Such several
 sums or rents so apportioned, and payable as aforesaid,
 nevertheless to be respectively payable, and paid at such
 time and in such manner, and subject to such powers and
 remedies in all respects as the said yearly chief or ground
 rent of £ , was heretofore reserved, made payable,
 and subject by the before-mentioned indenture.

Given under our hands and seals the day and year first
 above written.

*Notice to give up Possession of Premises required under
 Section 121.*

Form 68.

To (tenant's name and address).

You are requested to take notice that the
 Company, in pursuance of the (*special Act*), hereby demand
 from you possession of the premises, No. ,
 Street, in the parish of , in the
 county of , which you occupy, having no
 greater interest therein than as tenant from year to year,
 and require you to give possession of the said premises
 within days from the date hereof.

Form 68.

The _____ Company are willing to pay you any compensation to which you may be entitled under the 121st section of the Lands Clauses Consolidation Act, 1845, and the amount of compensation, in case of difference, will forthwith be determined by two justices, as in the said Lands Clauses Consolidation Act, 1845, provided.

Dated this _____ day of _____ 18 ____.

(Signature)

Secretary of the said company.

Proceeding under Section 121. Notice to Produce.

Form 69.

In the matter of the _____ Act _____
Between the _____ Company
and _____

Take notice that you are hereby requested to produce on the hearing of the above matter at the Police Court _____, in the county of _____, on the _____ day of _____ 18 ____, at the hour of _____ in the _____ noon, to such magistrate of the said Police Court as may then be there sitting, all papers, documents, letters, writings, receipts, including receipts for rent, rates and taxes, and also all deeds and agreements, and copies of deeds, agreements, documents, letters, writings, and receipts in your possession, custody, or power in any way relating to the matters depending between you and the said company, and particularly all receipts for rent for or in respect of the premises, No. _____, Street _____, in the county of _____, now held by you.

Dated this _____ day of _____ 18 ____.

(Signature)

Solicitors to the _____ Company.

To

Summons to appear before Magistrate.

Police Court.

Form 70.

Police District } To _____ of _____
 to wit.

Whereas complaint this day hath been before the undersigned, one of the magistrates of _____, sitting at the Police Court, _____, in the county of _____, and within the _____ district, by _____, clerk to the solicitors for the _____ Company, for that _____, a certain house and premises, situate at _____, in the parish of _____, in the county of _____, and within the said district, are now in your possession, and that you have no greater interest therein than as tenant from year to year, and that you have been required by the said company, under the provisions of the (*special Act*), to give up possession of the said house and premises before the expiration of your interest therein, and that a difference has risen between you and the said company as to the amount of compensation (if any) to which you are entitled under section 121 of the Lands Clauses Consolidation Act, 1875.

These are therefore to command you, in her Majesty's name, to be and appear on _____ next, at _____ o'clock in the _____ noon, at the Police Court aforesaid, before me, or such other magistrate of the said Police Court as may then be there, who will then and there determine the amount of such compensation, and to be further dealt with according to law.

Give under my hand and seal, this _____ day of _____, in the year of our Lord one thousand eight hundred and _____, at the Police Court aforesaid.

Receipt for Compensation.

I _____ do hereby acknowledge that I have Form 71.
 received the sum of £ _____ in full for all claims and

Form 71. demands for compensation, costs, charges, and expenses against the _____ Company, in respect of my estate or interest in the premises known as No. _____, in the county of _____, by reason of the exercise of the powers of the (*special Act*), and the construction of the works thereby authorised.

Dated this _____ day of _____, 18 ____.
(Signed) _____

Receipt for Compensation.

Form 71 a. (*Title of undertaking.*)

Received this _____ day of _____, 18 __, of the _____ Company, the sum of _____ pounds, for the purchase, free from all encumbrances, of all the term, estate and interest of me the undersigned in the premises hereinafter described, and as compensation for all consequential and other damage and injury sustained or to be sustained by reason of the company taking or using the said premises under the powers and for the purposes of the (*special Act*). And I undertake, at the request and cost of the company, at any time on being required by them, to execute an assignment to them as they may direct of the said premises for all my term, estate and interest therein, subject to the rent and conditions on which I hold the same, and I also undertake to give the company possession of the said premises.

No. on Plan deposited for the Parish of	Description and Situation of the Property.	Term or Interest.	Special Stipulations and Conditions, if any.
18 Act			

Purchase money and compensation £

[Stamp.]

Receipt for Compensation, under Section 68.

I do hereby acknowledge that I have received the sum of £ , being in full for claims and demands against the Company for compensation for injuriously affecting the premises known as , in the county of , and held by me for an unexpired term of years from 18 , by reason of the diminution of the light and air appurtenant thereto, and the damage and injury caused by the execution of the works authorised by the (*special Act*), and the Acts incorporated therewith ; and the said sum includes all claim to compensation recoverable by me as tenant of the said premises, and is also in full for all costs and expenses whatsoever.

Dated this day of 18 .
£

(Signed)

*Application for Summons to Tenant from Year to Year
to attend before Justices to settle Compensation.*

(County) to wit.

Form 73.

The application of (*name of company*), of
made for and on their behalf to me
the undersigned, one of the police magistrates of the
sitting at the Court, within the
this day of one thousand
eight hundred and , whereby he saith that
the Company, by the (*special Act*), with
which Act the Land Clauses Consolidation Act, 1845, is
incorporated, being empowered and authorised to purchase
and take the premises hereinafter mentioned, did by a
notice in writing, dated the day of 18 ,
and duly served upon , of , in the parish
of , in the county of , give to the

Н Н

Form 73. said , then the occupier of the premises, and claiming to have no greater interest than as tenant for a year or from year to year, notice that the said company required to purchase and take the said premises, known as aforesaid, under the powers and for the purposes of the said Act, which premises are distinguished in the map or plan and book of reference thereto, deposited for the purposes of the said first-mentioned Act, at the office of the clerk of the peace for the county of , which relates to the said parish, by the No. . And the said company have failed and still fail to agree as to the amount of compensation to be paid to the said for the value of his unexpired term or interest as aforesaid in the said premises. Whereupon the said Company by the said , prayeth that the said may be summoned before a police magistrate of the sitting at the Court, in the said , by whom the said question of compensation may be heard, determined, and settled, pursuant to section 121 of the Lands Clauses Consolidation Act, 1845.

Notice under Section 122 to produce Lease.

Form 74. To

(Name and address of tenant.)

Whereas the Company requiring to purchase and take for the purposes and under the powers of the (*special Act*), all that piece or parcel of land, with the messuages and buildings erected thereon, or on some part thereof, situate in the parish of , in the county of , and which said piece of land and premises so required as aforesaid are known as No. , Street, , and are defined and described on the plans and in the book of reference of the works authorised by the said Act, deposited at the office of the clerk of the peace for that

county, and numbered _____ in the said parish of Form 74.
 _____, did by a notice in writing, dated the
 day of _____, one thousand eight hundred and _____,
 and containing all such particulars as are required by the
 Lands Clauses Consolidation Act, 1845, in that behalf give
 notice to you the said _____ of their intention to take
 the said land and premises. And whereas you the said
 _____ having a greater interest in the said land and
 premises than as tenant at will, claim compensation in
 respect of an unexpired term in the said land and premises.
 Now the said _____ Company, in pursuance of the 122
 section of the said Lands Clauses Consolidation Act, 1845,
 require you the said _____ to produce the lease or
 grant in respect of which such claim is made, or the best
 evidence thereof in your power, in accordance with the
 provisions of the said Act.

Dated this _____ day of _____ one thousand eight
 hundred and _____

(Signed)

Secretary to the said Company.

*Notice to adjoining Owners of Intention to Sell
 Superfluous Lands.*

To (landowner) _____ of _____ Form 75.

The _____ Company, pursuant to the provisions of
 an Act passed in the _____ years of _____ Majesty,
 intituled _____, and of the several Acts
 incorporated therewith or relating to their undertaking,
 and _____ and of the Lands Clauses
 Consolidation Act, 1845, hereby offer to you for sale,
 as superfluous lands, the land described in the tracing
 hereunto attached, and thereon coloured _____, and
 hereby give you notice that if within six weeks from the
 service thereof you do not signify to the said company that
 you are desirous of purchasing the same, the said company

Form 75. will proceed to a sale thereof in such manner as they shall think fit.

Dated the day of 18 .

(Signed)

Secretary to the said Company,
London.

Notice of Claim, and of Desire to have Amount of Compensation determined by Arbitration or by a Jury.

Form 76. To the Company.

Whereas by a certain notice in writing, dated the
day of , 18 , under
the hand of , the secretary of the
said company.

I, the undersigned , of ,
in the county of , was informed that
you the said company require to (*here recite notice to treat*).

Now, in pursuance of the requisition in your said recited notice contained, I hereby inform you the said company that I am seised of an estate of inheritance in fee simple of and in the said lands and hereditaments in the said notice to treat, and the schedule thereto described, and required to be purchased and taken by you, subject to (*here describe any ground rents or encumbrances; or if the tenure be leasehold, specify the duration of the term, with the date of the lease, and the rent payable, &c.*).

And I hereby give you further notice that I claim as compensation for my estate and interest in the said lands and hereditaments, and for the damage which will be sustained by me by reason of the execution of the works authorised by the said (*short title of special Act*), the sum of £

And I hereby give you further notice that unless you agree to pay the sum above claimed it is my desire that

the amount to be paid to me in respect of the above claims Form 76.
shall be determined by arbitration in the manner prescribed by the Lands Clauses Consolidation Act, 1845, or shall be settled by a jury, according to the provisions contained in the Lands Clauses Consolidation Act, 1845. And I do hereby give you notice that I have by writing under my hand, bearing even date herewith, nominated and appointed _____, of _____, in the county of _____, to be the arbitrator on my behalf, in the matters aforesaid, and do hereby request you to nominate and appoint some person to act as arbitrator on your behalf in the matters aforesaid.

Witness my hand this _____ day of _____, 18 ____.

(Signed)

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